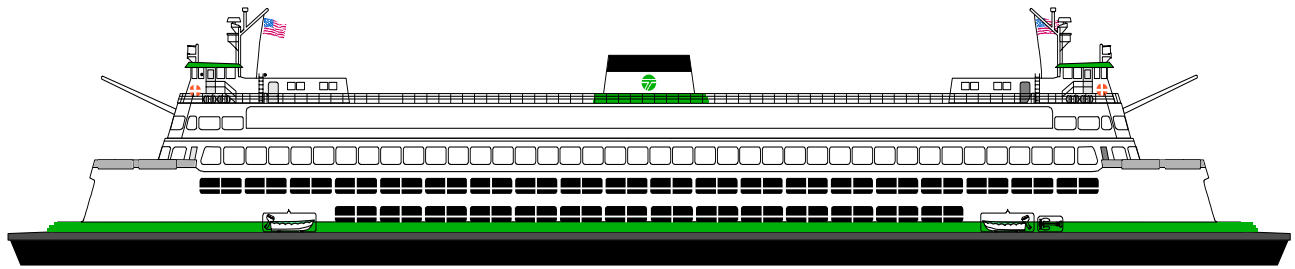


PART 9

CONTRACT



WASHINGTON STATE FERRIES

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

M.V. ELWHA

PROPULSION CONTROL SYSTEM REPLACEMENT

CONTRACT NO. 00-7171

US FTA # WA-05-0040, WA-90-X364

AUGUST 2006

DRAFT

WASHINGTON STATE FERRIES

M.V. ELWHA

PROPULSION CONTROL SYSTEM REPLACEMENT

CONTRACT NO. 00-7171

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WASHINGTON STATE FERRIES

M.V. ELWHA

PROPULSION CONTROL SYSTEM REPLACEMENT

CONTRACT NO. 00-7171

1 **THIS CONTRACT** is made and entered into this ____ day of _____, 2006, by
2 and between **WASHINGTON STATE FERRIES**, a division of the Washington State
3 Department of Transportation (hereinafter called "WSF") and _____,
4 a corporation authorized to do business in the State of Washington (hereinafter called the
5 "Contractor").

6 **WITNESS THAT:**

7
8
9 **WHEREAS**, WSF operates twenty-six (26) ferries serving twenty (20) ports in Puget
10 Sound, Washington and adjacent Canadian waters; and

11
12 **WHEREAS**, WSF's ferry fleet includes the Super Class vessel M.V. Elwha,
13 originally built in 1967 (hereinafter called the "Vessel"); and

14
15 **WHEREAS**, WSF desires to contract for: (i) the removal of certain components of
16 the Vessel's existing Propulsion Control System (hereinafter called the "PCS"); and (ii) the
17 procurement and installation of replacement PCS components, plus Spare Parts and Special
18 Tools; and

19
20 **WHEREAS**, the procurement of the PCS shall include all design, manufacturing,
21 training, testing, sea trials and Authoritative Agency certifications for the PCS; and

22
23 **WHEREAS**, pursuant to legislation in Revised Code of Washington (RCW)
24 47.56.030 et seq., WSF issued a Request For Proposals ("RFP") to solicit from interested
25 firms proposals for the new, replacement PCS; and

1 **WHEREAS**, _____ (___) firms submitted proposals to WSF for this project;
2 and following proposal evaluation, WSF selected the Contractor's proposal as the most
3 advantageous, taking into consideration the RFP requirements and the proposal evaluation;
4 and
5

6 **WHEREAS**, the Contractor is duly authorized and qualified to provide a new,
7 replacement PCS for the Vessel, and has signified its capability and willingness to perform
8 such work in accordance with the terms of: (i) this Contract, including applicable sections in
9 Division 1 of the WSDOT 2006 Standard Specifications For Road, Bridge and Municipal
10 Construction - English Units; (ii) the Contractor's Proposal; and (iii) the project RFP
11 (including all Addenda thereto), all of which are incorporated herein by this reference; and
12

13 **WHEREAS**, WSF agrees to purchase such new PCS for the Vessel in accordance
14 with and subject to the terms of this Contract;
15

16 **NOW, THEREFORE**, in consideration of the terms, conditions, covenants and
17 performances contained herein or attached, referenced and made a part hereof, the parties
18 hereto agree as follows:
19
20

1. DEFINITIONS, ABBREVIATIONS AND INTERPRETATION OF TERMS

The following definitions, abbreviations and interpretations of terms are meant to assist the establishment of a common meaning and understanding of this Contract. In the event of any instance where there is an irreconcilable inconsistency between the definitions and abbreviations set forth in this Article and the use of said terms elsewhere in the Contract Documents, then in that instance, but only in that instance, the use of such definition, abbreviation or interpretation of terms elsewhere in the Contract Documents shall govern. Provisions contained in Exhibits which are incorporated into the Contract may use different defined terms than those used in the Contract itself.

1.1. Definitions

Addenda shall mean those documents identified as Addenda issued by WSF through the date hereof as supplements to the project Request For Proposals (RFP) Package, but only to the extent that such Addenda supplement, modify or interpret Contract Documents.

Authoritative Agencies or **Regulatory Agencies** shall mean, with respect to any particular aspect of the Contract Work, any governmental or governmental invoked agency including, but not limited to: the Institute of Electrical and Electronics Engineers (IEEE), United States Coast Guard (USCG), United States Public Health Service (USPHS), Federal Communication Commission (FCC), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), United States Net and Gross Tonnage Admeasurements (USNGTA), Underwriters' Laboratories (UL), Washington State Department of Labor and Industries (WSL&I), U.S. Department of Labor (DOL), and others like the Classification Society, Illumination Engineering Society, etc.; (i) whose approval may be required to fulfill the obligations of the Contract; (ii) which have promulgated relevant Regulations; (iii) which are referenced by this Contract, the Specifications, or the Drawings, directly or indirectly; or (iv) which in any other manner has authority with respect to the Contract Work and the Vessel.

Award Price is the total price awarded for the PCS, including the replacement PCS components, one (1) set of Spare Parts, one (1) set of Special Tools, and the Contract Bid Support Package, as shown in the Total Proposal Price for Award portion of the Financial and Schedule Proposal Form.

Completion Dates

Milestone Delivery Dates are the dates established in the Contractor's Financial and Schedule Proposal that commit the Contractor to deliver a defined portion of the work and receive an appropriate progress payment based on successful completion on schedule. These dates also establish deadlines after which liquidated damages may be assessed in a few critical instances in accordance with the "Failure to Complete on Time" Article.

Substantial Completion Date is the day the WSF Representative determines that: (i) the Contractor has successfully completed the Technical On-site Support milestone; and (ii) WSF has full and unrestricted use and benefit of the Vessel, from both the operational and safety standpoints, with only minor incidental work or correction or repair remaining for completion of the Contract Work for the Vessel. At that time, WSF will acknowledge Substantial Completion by sending a letter to the Contractor acknowledging the physical completion of the Contract Work and satisfactory completion of tests and trials. The letter will specify the status of liquidated damages, listing all outstanding work (including non-physical work), and indicating that all outstanding work becomes warranty work.

Completion Date is the date all of the Contract Work for such Vessel, including all non-physical (paper) Contract Work, is completed. It will not be the same date as Final Acceptance which occurs upon WSF acceptance of all Contract Work at the end of the Contract. The WSF Representative will determine when the Completion Date occurs and will give the Contractor written notice of such Date. Such notice shall not imply WSF acceptance of the Contract Work.

Final Acceptance Date (see "Final Acceptance or Final Acceptance Date" definition).

Contract Documents consist of all RFP Package Volumes and RFP Addenda, the Contractor's Prequalification Application (if any) and Proposal, Work Authorization Records, Contract Modifications, Change Orders, and duly executed Amendments to the Contract, and all documents specifically referenced therein.

Contract Drawings or Contract Plans (see "Drawing Definitions").

Contract Guidance Drawings (see "Drawing Definitions").

Contract Provisions is an RFP term used to describe a group of RFP documents which provide essential project information for proposal preparation and, in part, for Contract performance.

Contract Security is the form of performance, payment and warranty security furnished by the Contractor in compliance with the "Contract Security" Article.

Contractor is the party to the Contract that is responsible for design, manufacturing, fabrication, delivery, commissioning, training, testing and regulatory agency certifications, for the PCS and performance of all Contract Work.

Contractor's Representatives shall mean those individuals who have authority to make final decisions on behalf of the Contractor as designated by written notice to WSF required by the "Contractor's Representatives" Article. Each Contractor's Representative shall have such power as is set forth in the written appointment. Reference to the "Contractor's Representative" for a particular aspect of the Contract Work shall mean the appropriate Contractor's Representative charged with responsibility for such matters in the written appointment.

Contract Time shall mean the time between commencement of the Contract and the Completion Date for the PCS.

Contract Work shall have the meaning set forth in the "Scope of Work" Article.

Correction Period shall have the meaning set forth in the "Warranty Deficiencies and Remedies" Article.

Department or **Washington State Department of Transportation** shall mean the Agency authorized by the laws and regulations of the State to administer transportation related work.

Diagrammatic Drawings (see "**Drawing Definitions**").

Drawing Definitions:

Arrangement Drawings are those drawings that show the physical location of equipment, service, piping, cable runs or any other category of installation. The term Arrangement Drawings covers: General Arrangement Drawings which show the location of spaces and items in relationship to each other; Space Arrangement Drawings which show the equipment and other items within a space; and specific System Arrangement Drawings which show how equipment will be placed, piping will be run, cable runs will be laid and other services provided. Arrangement Drawings may or may not be dimensioned, depending on the requirements of the system and/or equipment being installed. In the case of Arrangement Drawings that are not dimensioned, the Contractor shall maintain the relative and proportional physical relationship of items shown. In the case of dimensioned drawings, the Contractor shall install the equipment/items to the dimensions shown within the Contract tolerances for installation. Interferences encountered are the responsibility of the Contractor to resolve as a part of the base Contract Work. Deviations from dimensioned drawings and/or Arrangement Drawings requires written authorization from WSF prior to implementation.

1
2 **As Built Drawings** are those drawings in each specified category that are
3 prepared, *after installation is complete*, by actual physical measurement.
4 They contain dimensions of equipment, service and structure, all referenced
5 to established baselines within the Vessel. They are used for design
6 purposes during the planning of future modifications and repairs.
7 Therefore, they must accurately document the Vessel upon completion of all
8 Contract Work.
9

10 **Certified Equipment Drawings** are detailed design material required to be
11 accurate and fixed in dimensions, weight, center of gravities and such other
12 technical details, to allow WSF and the Shipyard Contractor to rely on the
13 certified detail, quantity or dimension for integration into the Shipyard
14 design with no future change. All or part of a document or drawing may be
15 “Certified”. In cases where only specific items, or details are “Certified”
16 they shall be specifically called out so that no ambiguity remains as to the
17 Contractor’s intent. Costs associated with Change Orders, including Delay
18 and Disruption, required in the Shipyard Contract because of Contractor
19 deviations from “Certified” documents and drawings, shall be the sole
20 responsibility of the Contractor.
21

22 **Contract Guidance Drawings** are those drawings identified as such in the
23 Specifications, which illustrate certain design features of the Vessel. They
24 include such things as plan, elevation, and section views; diagrams and
25 sketches; proposed arrangements and details; estimated bills of material;
26 and symbols. These drawings do not necessarily depict, nor is it intended
27 that they depict, all features, details, and arrangements of the systems or
28 structures to which they relate. Contract Guidance Drawings are not
29 Contract Drawings as defined above. Contract Guidance Drawings serve
30 the purpose of providing information which, when utilized in conjunction
31 with the applicable requirements of the Specifications, will assist in design
32 development of the Working Drawings. Deviation from the Contract
33 Guidance Drawings is permitted, provided that the intent of the Contract
34 Documents is fulfilled. WSF must be notified, in writing, of each intended
35 deviation prior to or when submitting Working Drawings.
36
37

Diagrammatic Drawings are any drawings which represent piping, ventilation, and electrical systems which indicate the relative function of the system components, valves and fittings, branches, etc. which can be used as a guide to arrangement and detail drawings. They contain information such as pump and motor size and capacity; pipe, duct, or wire size; flow direction, velocity and pressure, voltage and ampere rating, pressure drops and other design criteria which will identify major equipment and components, function and operating characteristics.

Drawings shall mean the Contract Drawings/Contract Plans, detailed Working Drawings, Shop Drawings and Diagrammatic Drawings.

Information or Illustrative Drawings are drawings which illustrate how similar elements of the Contract Work were designed for WSF ferries, and are made available for guidance and information in developing details of the Contract Work. The Contractor is not required to perform the Contract Work in the exact manner set forth in the Information or Illustrative Drawings.

Shop Drawings are drawings which illustrate how the PCS will be manufactured. The Contractor shall prepare and submit these drawings to the applicable Authoritative Agencies for approval as required by the Regulations. The Shop Drawings shall show details of manufacture, integration with equipment and configuration to assure acceptable final appearance and fit.

Vendor Drawings are drawings provided by Vendors to show details of manufactured pieces of equipment or systems.

Working Drawings shall mean those drawings, sketches, calculations, etc. prepared by the Contractor for the purpose of completing the detailed design and providing direction to installing workers that will insure compliance with Contract Documents. WSF review and approval of Working Drawings does not relieve the Contractor of responsibility for meeting Contract requirements. They shall be to a level of detail to permit review and approval by WSF and Authoritative Agencies and to facilitate timely completion of the Contract Work. Where Illustrative Drawings are provided, Working Drawings shall be prepared to reflect, to the greatest extent practicable, the applicable Illustrative Drawings.

Drydock shall mean the drydock (if applicable) located at the Shipyard or such other drydock as WSF may approve in writing.

1 **Final Acceptance or Final Acceptance Date** is the date that WSF's Dir., Vessel
2 Engineering, signs the designation "Date of Acceptance" on the Final Contract
3 Voucher Certification (WSDOT Form #134-146) following completion and Final
4 Acceptance of all Contract Work for the Vessel. The Contractor is required to
5 properly execute and forward this form to WSF. This date will not coincide with the
6 Completion Date of the Vessel.

7
8 **Final Contract Voucher Certificate** shall have the meaning set forth in the
9 "Progress Payments" Article.

10
11 **Financial and Schedule Proposal** shall mean the financial offer and Milestone
12 Delivery Date schedule of the Contractor submitted on the prescribed Financial and
13 Schedule Proposal Form for the Contract, which offer has been accepted by WSF.

14
15 **Financial and Schedule Proposal Form** is the WSF-supplied form which includes:
16 Contractor certifications; pages on which the Contractor specified its price and
17 Milestone Delivery Date schedule for the Contract Work; various Attachments; and
18 the Contractor's signature.

19
20 **Government** shall mean the United States of America acting by and through its
21 Cabinet Secretaries and Departments as noted in the Contract Documents.

22
23 **Information or Illustrative Drawings** (see "**Drawings**" definition).

24
25 **Initial Price** shall have the same meaning as **Award Price**.

26
27 **Memorandum of Agreement (MOA)** shall mean a document titled Memorandum
28 of Agreement formalized by signatures of the designated WSF Representative and a
29 Contractor Representative setting forth, as necessary, areas of mutual agreement that
30 establish or define administrative procedures.

31
32 **Option Price** shall mean the proposal price for Optional Modification of Propulsion
33 Switchboard and Optional Refurbishment of SCR Cooling System, as shown in the
34 Total Proposal Price for Option Consideration portion of the Contractor's Financial
35 and Schedule Proposal Form.

36
37 **Owner Furnished Equipment or OFE** (Reserved).

38
39 **Progress Payments** shall mean payments made in accordance with the terms of
40 "Progress Payments" Article.

41
42 **Project Engineer** shall mean the individual identified in writing by WSF as the
43 Representative of WSF who is in charge of overseeing the Contract Work for WSF
44 and is designated as the WSF Project Engineer.

1 **Proposal** shall mean the Financial and Schedule Proposal, and the Technical
2 Proposal, submitted by the Contractor for the Contract.
3

4 **Proposal Documents** shall mean the Contractor's Financial and Schedule Proposal,
5 Technical Proposal, Proposal Security, and all supplemental information, instruments
6 or documents, which were provided or submitted by the Contractor to WSF during
7 the RFP process.
8

9 **Proposal Item (or Financial Proposal Item)** shall mean the work specified in the
10 Financial and Schedule Proposal Form for a portion of the Contract Work.
11

12 **Proposal Price** shall mean the Contractor's proposed price for the Contract Work, as
13 shown on the Financial and Schedule Proposal Form.
14

15 **Propulsion Control System or PCS** shall mean all deliverable items listed for the
16 PCS on the RFP Financial and Schedule Proposal Form document. **Unless otherwise**
17 **provided, obligations under this Contract for "Propulsion Control System" shall**
18 **also apply, without limitation, to the Spare Parts, Special Tools and the Contract**
19 **Bid Support Package, and to the Optional Modification of Propulsion**
20 **Switchboard and Optional Refurbishment of SCR Cooling System.**
21

22 **Quality Assurance (QA) / Quality Control (QC)** (Reserved).
23

24 **Ready For Trials Date** is the day that is determined and agreed, by joint inspection,
25 that the Contract Work is reasonably complete and the Contractor, in conjunction
26 with the installing Shipyard, can schedule Shipboard Operational Tests. The joint
27 inspection shall be conducted by WSF and the Contractor to ensure all equipment has
28 been properly tested, all service systems have been completely installed and tested
29 and/or approved, all excess material and equipment has been removed from the
30 Vessel, all spaces have been cleaned and inspected, and all listed discrepancies are
31 minor in nature and magnitude, and all unfinished Contract Work is considered
32 minor.
33

34 **Regulations** shall mean collectively all applicable Federal, State, Authoritative
35 Agency and local laws, ordinances and regulations.
36

37 **Retainage** shall mean a 5% withholding from each Progress Payment and Change
38 Order Work payment pursuant to RCW 60.28.011 and in accordance with the
39 "Progress Payments" Article.
40

41 **RFP Package** shall mean the project solicitation documents issued by WSF entitled
42 "Request For Proposals - M.V. Elwha Propulsion Control System Replacement
43 Contract, including Contract Provisions; Specifications and Sample Forms, Contract
44 Guidance Drawings; all RFP Addenda; and other pertinent project information.

1 **Schedules** shall mean those schedules identified in the "Schedules" Article.

2
3 **Secretary or Secretary of Transportation** shall mean the Secretary of the
4 Washington State Department of Transportation and such agents as are authorized to
5 act in his behalf.

6
7 **Shipyard** shall mean the location(s) where the installation portion of the Contract
8 Work is to be performed or such other location(s) as WSF may announce or approve
9 in writing.

10
11 **Specifications** shall mean the Technical Specifications and related Contract
12 Documents provided in the RFP, including all Addenda thereto.

13
14 **State** shall mean the Washington State Department of Transportation, acting by and
15 through its Washington State Ferries division, and its duly authorized
16 representative(s), as designated in writing by the Secretary.

17
18 **Subcontractor** shall mean an entity to which the Contractor subcontracts part of the
19 Contract Work pursuant to Exhibit 5 to the Contract, WSDOT 2006 Standard
20 Specifications – Division 1, Section 1-08.1, Subcontracting, page 1-76. The official
21 members of a joint venture Contractor shall not be considered Subcontractors under
22 this Contract.

23
24 **Surety** shall mean any surety or bond company, or owner of alternate security, that is
25 responsible for any portion of the Contract Security; or whose assets may be, in any
26 way, bound to ensure performance of the Contract requirements, payment of all
27 obligations pertaining to the Contract Work, and fulfillment of such other conditions
28 as are specified in the Contract, or as otherwise required by law.

29
30 **Total Proposal Price for Award** shall have the same meaning as **Award Price**.

31
32 **Total Proposal Price For Evaluation** shall mean the Total Proposal Price for the
33 PCS, Optional Modification of Propulsion Switchboard and Optional Refurbishment
34 of SCR Cooling System, as identified and shown on the Financial and Schedule
35 Proposal Form.

36
37 **Total Proposal Price For Option Consideration** shall mean the Total Proposal
38 Price for the following: Optional Modification of Propulsion Switchboard and
39 Optional Refurbishment of SCR Cooling System, as identified and shown on the
40 Financial and Schedule Proposal Form.

41
42 **Total Contract Price** shall mean the Award Price as adjusted from time to time
43 pursuant to the terms of this Contract.

44
45 **Vessel** shall mean the M.V. ELWHA. Generally, the word "Vessel" means the
46 Vessel subject to the Contract Work under this Contract.

1 **Warranty Deficiencies** shall have the meaning set forth in the "Warranty
2 Deficiencies and Remedies" Article.

3
4 **Working Drawings** (see "**Drawings**" definition).

5
6 **WSF** shall mean Washington State Ferries, a division of the Washington State
7 Department of Transportation, acting by and through its authorized representative(s).

8
9 **WSF Representative** or **State's Representative** shall refer to the designated
10 Representatives appointed by WSF, which may be the Project Engineer or other
11 designated Representative. Each WSF Representative shall have such power as is set
12 forth in the written appointment. Reference to the "WSF Representative" for a
13 particular aspect of the Contract Work shall mean the appropriate WSF
14 Representative charged with responsibility for such matters in the written
15 appointment.

16
17 1.2. Additional definitions relating to other topics are contained in the appropriate
18 sections of this Contract and other Contract Documents.

1.3. Abbreviations

1.3.1. Associations and Miscellaneous

The following abbreviations shall have the meanings set forth next to them when and if used in the Contract Documents:

ACM	Asbestos Containing Materials
ABS	American Bureau of Shipping
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ASNT	American Society for Nondestructive Testing
ASTM	American Society for Testing and Materials
ASME	American Society of Mechanical Engineers
ASHRAE	American Society of Heating, Refrigeration, and Air Conditioning Engineers
AWS	American Welding Society
AWWA	American Water Works Association
BHD	Bulkhead
CEO	Chief Executive Officer
CFR	Code of Federal Regulations
CL	Centerline
CS	Classification Society
DOL	United States Department of Labor
EDR	Engineer's Day Room
EOS	Engineer's Operating Station
DOT	United States Department of Transportation
EPA	Environmental Protection Agency
ESR	Engineer's Storeroom
FCC	Federal Communications Commission
EWS	Engineer's Work Shop
FHWA	Federal Highway Administration
FR	Frame
FTA	Federal Transit Administration
IEEE	Institute of Electrical and Electronics Engineers
ISO	International Standards Organization
LCP	Lead Containing Paint
MARAD	Maritime Administration, Department of Transportation
MBE	Minority Business Enterprise
MSS	Manufacturers Standardization Society of the Valve & Fittings Industry
NAS	National Aerospace Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NPT	National Standard Taper Pipe Thread

1	NVIC/NVC	Navigation and Vessel Inspection Circular
2	OFE	Owner Furnished Equipment
3	PCB	Polychlorinated Biphenyl
4	QA	Quality Assurance
5	QC	Quality Control
6	RCW	Revised Code of Washington
7	SAE	Society of Automotive Engineers
8	SCR	Silicon Control Rectifier
9	SNAME	Society of Naval Architects and Marine Engineers
10	SSPC	Steel Structures Painting Council
11	STBD	Starboard
12	Tx Dk	Texas Deck
13	UL	Underwriters' Laboratories, Inc.
14	UPD	Upper Passenger Deck
15	USC	United States Code
16	USCG	United States Coast Guard
17	USPHS	United States Public Health Service
18	WAC	Washington Administrative Code
19	WHO	World Health Organization
20	WSDOE	Washington State Department of Ecology
21	WSDOLI	Washington State Department of Labor and Industries
22	WSDOT	Washington State Department of Transportation
23	WSF	Washington State Ferries
24	WSTC	Washington State Transportation Commission
25		

1.3.2. Items of Work and Units of Measurement

The Contract Documents may include common engineering and construction abbreviations. The following list is not all inclusive, but when the following abbreviations are used, they shall have the meanings set forth next to them:

Al.	Aluminum
C	Centigrade
CFM	Cubic Feet per Minute
Cfs	Cubic Feet per Second
Cl.	Class
CO ₂	Carbon Dioxide
DIA.	Diameter
DWG	Drawing(s)
Est.	Estimate or Estimated
Excl.	Excluding
F	Fahrenheit
Ft.	Foot or Feet
GPH	Gallons per hour
GPM	Gallons per minute
In.	Inch or Inches
Incl.	Included
IPS	Iron Pipe Size
L	Liter
lb.	Pound(s)
LF	Linear Foot (Feet)
Mech	Mechanical
Nat	Natural
PRESS	Pressure
PSI	Pounds per Square Inch
PSIG	Pounds per Square Inch Gauge
PSIA	Pounds per Square Inch Absolute
PVC	Polyvinyl Chloride
QTRS	Quarters
RGLTR.	Regulator
SECT.	Section
STL.	Steel
Sq. Ft.	Square Foot or Feet
Sq. Yd.	Square Yard(s)

1 **1.4. Interpretation of Terms**

2
3 1.4.1. (Reserved).

4
5 1.4.2. **Approval** - Unless the context is expressly to the contrary, any reference in
6 the Contract Documents to "approved" or "approval" shall mean "approved
7 by WSF" or "approval by WSF". WSF approval does not relieve the
8 Contractor of securing approval of the Authoritative Agencies/Regulatory
9 Bodies as required by the law, nor does it relieve the Contractor of the
10 obligation to meet the Contract Documents, nor does it imply approval of
11 deviations from the Contract Documents unless specifically mentioned in
12 the approval itself.

13
14 1.4.3. **Capitalized Terms** - Terms used during the performance of the Contract
15 Work shall have the meaning assigned to them in the Contract Documents
16 as the context may require, whether or not capitalized or identified as a
17 defined term.

18
19 1.4.4. **Compliance With, According To** - Terms such as "compliance with" or
20 "according to" the Contract Documents shall mean compliance with or
21 according to all of the Contract Documents subject to the "Coordination of
22 Contract Documents" Article and subject to any variation from certain of
23 the Drawings as is permitted or contemplated by the terms of the Contract
24 Documents.

25
26 1.4.5. **Days** - Any reference to "days" herein shall be calendar days unless
27 otherwise specified.

28
29 1.4.6. **Dollars or \$** - Any reference to "dollars" or use of the symbol "\$" herein
30 shall be United States dollars.

31
32 1.4.7. **Furnish** - When the Contract Documents state that the Contractor is
33 required to furnish an item, the Contractor shall be responsible for
34 manufacturing, purchasing, or otherwise procuring and providing such item
35 including all spare parts and documentation, and deliver such item to a
36 location identified by WSF, as required by the Contract.

37
38 1.4.8. **He, She or It** - These terms are used interchangeably and in the sex neuter
39 sense.

1.4.9 **Install** - When the Contract Documents state that the Contractor is to install an item, the Contractor shall be responsible for supplying all labor, tools, equipment, material, testing and documentation necessary to perform such installation in accordance with manufacturer's instructions and as required by the Contract Documents. For all installations, the Contractor shall supply all electrical power, water service, lubrication, lighting, ventilation and other facilities or means required for the complete, in ready to operate condition, installation, and shall deliver to WSF complete and operable machinery, equipment or systems.

Please refer to the RFP Technical Specifications for a description of "installation support" when such service is required in lieu of actual installation.

1.4.10. **Or Equal** – An "or equal" product is one which exhibits both size and weight substantially similar to the product specified in the Contract Documents, to ensure that no adjustment to the equipment arrangement would be required to accommodate the product's inclusion as a substitute into the vessel(s). Additionally, an "or equal" product must have the same or similar characteristics, performance, reliability, maintainability and other salient features as the product specified in the Contract Documents, and which fulfill the requirements thereof. The total performance of the "or equal" product will be such that its use will not adversely affect the intended performance or systems of the Vessel and will cause no increase in required maintenance or cause premature replacement.

Demonstration of an "or equal" status is the sole responsibility of the Contractor. All "or equal" substitutions require written approval by the WSF Representative. The approval of an "or equal" product by WSF does not relieve the Contractor of resolving any problems or interference which result from differences between the specified product and the "or equal" product.

The provisions of this Paragraph also apply to any substitutions for specified products that are no longer commercially available.

See the RFP Technical Specifications' "Scope of Supply" article for further information regarding the procedure for requesting "or equal" status.

1.4.11. **Provide** - When the Contract Documents state that the Contractor is to provide an item, the Contractor shall furnish the item in fully operational condition, unless otherwise provided in the Contract Documents.

2. SCOPE OF WORK

- 2.1. The Scope of Work for this Contract shall be as described in the RFP Specifications. In performing the Contract Work, the Contractor shall: (i) furnish, provide, perform and/or install (as the case may be) all services, labor, tools, equipment, materials, transportation, and incidentals (as the case may be) described in or contemplated by the Contract Documents; and (ii) do everything required of the Contractor pursuant to the terms set forth in, or incorporated by reference into, the Contract Documents (all of which work to be performed by the Contractor to be referred to as the "Contract Work").
- 2.2. The Contractor warrants that: (i) it has determined the methods, materials, labor, and equipment required to perform the Contract Work; (ii) and that the Contract Time is sufficient for completion of the Contract Work; (iii) and that the Proposal Price is reasonable in view of the cost of such methods, materials, labor and equipment.
- 2.3. The Proposal Documents are incorporated into and made a part of this Contract by reference. All warranties, undertakings and representations made by the Contractor in the Proposal Documents are binding obligations of the Contractor under this Contract.
- 2.4. The Contractor warrants that it has reviewed all of the Contract Documents, including all of the Addenda, and all other documents and materials which it deems necessary or advisable to determine the nature and scope of the Contract Work and to determine that the Contractor can meet the Milestone Delivery Dates. The Contractor warrants that it is satisfied that the Contract Documents are sufficient in form and substance to make such determinations with respect to the Contract Work.
- 2.5. The Contractor shall perform the Contract Work in accordance with the Contract Documents. The Contractor shall provide all necessary or advisable planning, scheduling, design development and engineering. The Contractor shall prepare all Drawings, procurement specifications, purchase orders, and other items and documentation as are required to supplement the information and implement the requirements contained in the Contract Documents in order to accomplish the substance and intent of the Contract Work.
- 2.6. Except where expressly set forth to the contrary in the Contract Documents, the Contractor is wholly responsible for obtaining the approval and certifications of all Authoritative Agencies as required, and the development, verification, and submission of validated final As-Built Drawings.

1 2.7. The Contractor warrants that it has the skills of an enterprise engaged in the
2 manufacture of propulsion control systems, and undertakes to take no advantage of
3 any error or omission in the Contract Documents which would be apparent to any
4 such enterprise. The Contractor warrants that as of the date hereof, it is not aware of
5 any such error or omission. In the event errors or omissions in the Contract
6 Documents are found which would prevent the Contractor from completing the
7 Contract Work in a manner consistent with all the rules of the Authoritative
8 Agencies, approved marine construction practices or other standards set forth in the
9 Contract Documents, the Contractor shall immediately notify WSF. WSF will then
10 make such corrections and interpretations as may be necessary to fulfill the intent of
11 the Contract Documents.
12

13 2.8. The Contractor shall use its best efforts to cooperate with WSF, including, but not
14 limited to, the WSF Representatives, in every way possible.
15
16

17 **3. SPECIFICATIONS, DRAWINGS AND OTHER REQUIREMENTS**

18

19 3.1. The Specifications and the final Proposal Documents are hereby incorporated into
20 and made a part of this Contract by reference. Conflict between the Specifications,
21 the final Proposal Documents and/or Authoritative Agencies shall be resolved by
22 complying with the most stringent requirement.
23

24 3.2. Drawings
25

26 3.2.1. The Drawings are hereby incorporated into and made a part of this Contract
27 by reference, but only to the extent and for the purposes contemplated by
28 this Contract and the Specifications as amended by the Addenda.
29

30 3.2.2. The Contractor is wholly responsible for developing all of the Working
31 Drawings necessary or advisable to perform the Contract Work.
32

33 3.3. (Reserved).
34

35 3.4. The Contractor shall keep a complete set of the Contract Documents and Drawings at
36 the Contractor's work site at all times in an organized format readily accessible for
37 review by the WSF Representatives.
38

1 3.5. Compliance with Laws, Regulations and Codes

2
3 3.5.1. The Contractor warrants that it is familiar with the Regulations.

4
5 3.5.2. As part of the Contract Work, the Contractor undertakes that all Contract
6 Work shall comply with the instructions, directives and requirements of and,
7 where required, be approved by the Authoritative Agencies and pursuant to
8 the Regulations, including, but not limited to:

9 A. Title 46, CFR;

10 B. Title 33, CFR;

11 C. Title 49, CFR;

12 D. (Reserved).

13 E. ABS, "Rules for Building and Classing Steel Vessels";

14 F. IEEE, Standard No. 45, "IEEE Recommended Practice for Electrical
15 Installations on Shipboard", except for new electric motors which
16 shall comply with 46 CFR 111.25; and

17 G. Applicable standards for electrical equipment and lighting as
18 published by UL.
19

20 3.5.3. Any misunderstanding or ignorance of the Regulations does not relieve the
21 Contractor of its obligations and shall not be adequate justification for
22 additional compensation or extension of the Contract Time.
23

24 3.5.4. The Contractor shall obtain all required permits and licenses and give or
25 post any notices these require. WSF shall provide full support in obtaining
26 those permits required in its name to perform the work.
27

28 3.5.5. Where the Specifications require that any aspect of the Contract Work
29 conform to certain standards of the MARAD, USCG, ASTM, AISI, SAE,
30 IEEE, applicable Classification Society or other recognized agency,
31 institution or body, the applicable portions of those standards form a part of
32 the Contract, and that requirement shall be clearly indicated on any purchase
33 specification, order or other relevant documents developed and issued by or
34 for the Contractor.
35

36 3.5.6. Unless WSF states otherwise in writing, all items, materials and work
37 requiring USCG approval shall be provided or made available by the
38 Contractor to the appropriate USCG Inspection Office in a timely manner to
39 enable the USCG to conduct its review and issue its directive for changes or
40 its approvals so as not to delay the Contract Work on the Vessel and
41 Completion.
42

- 1 3.5.7. Unless WSF states otherwise in writing, all items, materials and work
2 requiring Classification Society (CS) approval shall be provided or made
3 available by the Contractor to the CS in a timely manner and in accordance
4 with the CS rules. Compliance will allow the CS to conduct its review and
5 issue its approval or directive for change.
6
- 7 3.5.8. Interpretation or representation by WSF of any laws, regulations or
8 ordinances as set forth in the Contract Documents or otherwise, takes no
9 precedence over the law, regulation or ordinance itself and the Contractor
10 shall satisfy itself as to the true construction and content of such laws,
11 regulations and ordinances on a current basis.
12
- 13 3.5.9. Attached hereto and by this reference incorporated herein, are:
14 a. Exhibit 1, FTA Articles for Procurement Contracts; and
15 b. Exhibit 2, Wages, Benefits and Rates
16 The above are referred to individually and collectively as the "Regulations".
17 Without limiting its general undertaking to comply with all regulations, the
18 Contractor specifically agrees to comply with the Regulations identified
19 herein and will follow and implement said Regulations in accordance with
20 the procedures and practices described therein.
21
- 22 3.5.10. All fees and charges of the Authoritative Agencies associated with their
23 duties as contemplated by the Contract Documents shall be for the account
24 of the Contractor.
25
- 26 3.6. Where requirements of the Contract Documents exceed the requirements of any
27 Authoritative Agency, the Contract Documents shall prevail.
28
- 29 3.7. The extent of Contract Work is described in the Contract Documents. Additional
30 work undertaken by the Contractor which has not been specifically authorized by the
31 Contract Documents, or authorized by Change Order, shall be at the Contractor's sole
32 risk and expense.
33

1 3.8. All materials, machinery, equipment, and components furnished by the Contractor
2 shall be new, currently in production, and currently supported by spare parts readily
3 available to WSF. All materials, machinery, equipment, and components shall be of
4 good commercial marine quality, in full compliance with the Contract Documents,
5 the requirements of the Authoritative Agencies, and suitable for the service intended.
6 All equipment, materials, or components used or installed in the Vessel shall be free
7 from imperfections of manufacture and from defects which adversely affect
8 appearance or serviceability. The equipment that is WSF furnished and to be reused
9 and/or refurbished for reuse shall be governed under the project Specifications.

10
11 3.9. (Reserved).

12
13 3.10. (Reserved).

14
15 **4. COORDINATION OF CONTRACT DOCUMENTS**

16
17 4.1. All of the Contract Documents are essential parts of the Contract and a requirement
18 occurring in one is binding as though occurring in all. They are intended to be
19 complementary in their description of the Contract Work.

20
21 4.2. There are no intentional conflicts or omissions in the Contract Documents. In the
22 event of any conflicts or omissions in the Contract Documents, the order of
23 precedence shall be as follows:

24 A. This Contract, as amended or modified;

25 B. RFP Technical Specifications, as amended or modified;

26 C. Other RFP Package documents; and

27 D. Proposal Documents.

28
29 Absent express language to the contrary, any Contract Modifications and Change
30 Orders shall have precedence over all Contract Documents except the Contract.
31

1 **5. TOTAL CONTRACT PRICE**

2
3 5.1. WSF agrees to pay the Contractor the following amounts for the PCS and other items:

4
5
6 **A. Propulsion Control System** \$ _____

7
8
9
10 **TOTAL:** \$ **(Initial Procurement)**

11
12
13 The total price above, as adjusted from time to time as provided herein, shall be
14 referred to as the "Total Contract Price" for the Contract Work. Such figure at the
15 commencement of this Contract may also be referred to as the "Initial Price".

16
17
18 **B. Optional Modification and/or Refurbishment of Equipment:**
19 (See "Options" Article)

20
21 **1. Optional Modification of Propulsion Switchboard** \$ _____

22
23 **2. Optional Refurbishment of SCR Cooling System** \$ _____

24
25
26
27 **TOTAL:** \$ _____ *
28 **(A + B.1 and / or B.2 above)**

29
30 (* For reference only; only applies if WSF exercises its Options.)

31
32
33 5.2. Except as provided in this Article, WSF will make no adjustment in the Total
34 Contract Price due to: (i) inflation occurring during the performance of the Contract
35 Work; (ii) foreign currency exchange rates; (iii) project delays in award of this
36 Propulsion Control System Replacement Contract; or (iv) delay in award of the
37 shipyard installation contract.

38
39 Except as provided herein, under no circumstances will WSF be liable for any
40 consequential or incidental damages or expenses resulting from such delay in the
41 shipyard installation contract, including but not limited to, cost of inventory, lost
42 profits or loss or interruption of business.

- 1 5.3. WSF will make no adjustment in the Total Contract Price because of any change in
2 laws, ordinances or regulations, except as specifically provided by the following:
3
4 A. Changes in laws, ordinances or regulations within the scope of the Revised
5 Code of Washington ("RCW") 39.04.120; and
6
7 B. Changes in taxes on materials incorporated in or consumed for construction
8 of the Contract Work which are imposed by Federal or State Government,
9 or changes in the State Sales Tax, provided that the aggregate amount of all
10 such changes is greater than \$100.00 where:
11
12 1. for items included in the original Contract Work, the change takes
13 place after the Proposal Due Date; or
14
15 2. for items covered by a Change Order, the change takes place after
16 the date on which the Contract or Change Order was executed.
17
18 5.4. Compensation will be made by negotiated Change Order for any changes within the
19 scope of RCW 39.04.120. Compensation will be increased or decreased for the
20 actual dollar amount of changes in Federal or State taxes meeting the requirements of
21 this Article; provided that the Contractor, if requested by WSF, certify in writing that
22 no amount for any such change in taxes was included in the Initial Price as a
23 contingency reserve or otherwise; and provided further that the Contractor allow
24 WSF to audit its records to the extent necessary to substantiate any claim for
25 compensation under the provisions of this Article.
26
27

28 **6. OPTIONS**

- 29
30 6.1 WSF reserves the right to exercise Options for design and construction of: (i)
31 Optional Modification of Propulsion Switchboard; and (ii) Optional Refurbishment of
32 SCR Cooling System, at the Proposal Prices shown on the Financial and Schedule
33 Proposal Form. Subject to available funding, and at its sole discretion, WSF will
34 exercise either or both of the above Options within two (2) weeks of Commencement
35 of Contract. Exercise of each Option shall be accomplished by a Change Order to the
36 Contract. Such equipment may hereinafter be referred to collectively as "Optional
37 Modification and/or Refurbishment of Equipment".
38
39 6.2. It is agreed that WSF is under no obligation to exercise the Options. The Contractor
40 shall have no claim for damages, additional compensation, or any other relief if WSF
41 does not exercise either or both Options. The Contractor waives all Protest or Claim
42 rights relative to the non-exercise of such Options.
43
44 6.3. (Reserved).

7. PROGRESS PAYMENTS

7.1. (Reserved).

7.2. Progress Payments shall be made upon completion of work in accordance with the Milestone Delivery Dates specified in the Financial and Schedule Proposal form since the last application for payment. Retainage is part of the Progress Payment but is paid to a separate account established in accordance with paragraph 7.3. below. For each Progress Payment, the Contractor shall submit an invoice for the Contract Work performed for the subject Milestone. WSF will normally process and issue progress payments within fifteen (15) calendar days from receipt of invoice. However, payment will not be considered late if a check or warrant is mailed within thirty (30) calendar days.

Under Chapter 39.76 RCW, if WSF fails to make timely payment(s), the Contractor may invoice for no more than 1% per month on the amount overdue or a minimum of \$1.00.

7.3. The Retainage under this Contract shall be reserved by WSF as a trust fund for the protection and payment of: (i) the claims of any person arising under the Contract; and (ii) the State with respect to taxes imposed pursuant to Title 82 RCW which may be due from the Contractor. WSF will reserve and release the Retainage in accordance with the provisions of RCW 60.28.011.

7.4. In order to make Final Payment to the Contractor, the Contractor must submit to the WSF Representative a completed "Final Contract Voucher Certification" form, and all other documentation required by this Contract and by law to accomplish Final Acceptance of all Contract Work. This includes, but is not limited to, the Affidavit of Prevailing Wages Paid for the Contractor and each Subcontractor (processed by Labor and Industries) and other documents. The Final Contract Voucher Certificate shall be signed by the Contractor, and shall constitute a release of all claims of the Contractor against WSF and the State except such claims, and stated amounts, as are expressly identified and excepted from the Contractor's certification in the Final Contract Voucher Certificate. Claims made after submission of the Final Contract Voucher Certificate are invalid and waived by the Contractor.

7.5. The Contractor's rights under this Article to receive Progress Payments and the Retainage are further subject to all applicable terms of the Contract Documents and all relevant provisions of law.

8. SCHEDULES

- 8.1. The Manufacturing Schedule (MS) and Drawing Schedule (DS) are referred to jointly as the "Schedules". The Contractor shall be responsible for preparing and delivering the Schedules all in accordance with the Contract Documents. Approval of any submitted Schedules or any other schedule prepared by the Contractor shall not be construed to assign responsibility of performance or contingencies to WSF or to relieve the Contractor of its responsibility to adjust staffing, equipment and work schedules as required to ensure completion of Contract Work within the prescribed Contract Time.

9. CONTRACT REPRESENTATIVES

9.1. Contractor's Representatives

- 9.1.1. Prior to the commencement of the Contract Work, the Contractor shall appoint in writing its Contractor's Representatives, designating the functional responsibilities of and title of each, i.e. Superintendent, etc.
- 9.1.2. (Reserved).
- 9.1.3. (Reserved).
- 9.1.4. The Contractor agrees to assign to this Contract those key persons who were identified in the Proposal Documents, and to maintain its designated Contractor Representatives. No substitution shall be made without prior notification to and concurrence of the WSF Project Engineer in accordance with this requirement.
- 9.1.5. (Reserved).
- 9.2. Prior to commencement of the Contract Work, WSF shall appoint in writing its WSF Representatives.
- 9.3. The appropriate WSF Representatives shall be kept advised as to the progress of the Contract Work and shall be provided free access to the manufacturing facility at any time that the Contract Work is in progress. Any questions concerning responsibility or scope of authority of WSF Representatives should be directed to the Project Engineer.

1
2 **10. WORKING AND AS-BUILT DRAWINGS**
3

- 4 10.1. When submitting Working Drawings for approval, the Contractor shall state the latest
5 date on which it wishes to have the Working Drawings returned with WSF's
6 comments and/or approval. However, the failure of WSF to respond by such date
7 shall not be grounds for a modification in the Contract Time or compensation.
8 Working Drawings submitted to WSF for approval will normally be acted upon
9 within ten (10) working days of receipt.
10
11 10.2. The WSF Representative will review each Working Drawing submitted. Any failure
12 of the WSF Representative to find errors or omissions in the Contractor's
13 calculations, specifications, or drawings shall not relieve the Contractor of its
14 responsibility in relation thereto.
15
16 10.3. Approval by the WSF Representative of the Contractor's Working Drawings does not
17 relieve the Contractor of responsibility for the accuracy of dimensions and details,
18 locations or interferences; nor does mutual agreement of dimensions or details,
19 locations or interferences relieve the Contractor of the responsibility for the
20 agreement and conformity of his Working Drawings with the Contract Document; nor
21 does it relieve the Contractor of responsibility for compliance with the Contract
22 Documents or requirements of the Authoritative Agencies.
23
24 10.4. Any work undertaken by the Contractor prior to approval of Working Drawings by
25 the WSF Representative is at the Contractor's risk, including any and all costs of
26 delays or disruptions resulting from proceeding prior to approval.
27
28 10.5. Detail requirements for Working and As-Built Drawings are specified in the
29 Specifications. As-Built Drawings shall be acceptably completed without significant
30 errors, omissions, or reservations and submitted to WSF within thirty (30) days of
31 WSF's receipt of the PCS, pursuant to the Delivery of Equipment Article.
32
33

34 **11. QUALITY ASSURANCE AND CONTROL PROGRAM**
35

- 36 11.1. There is no Quality Assurance and Control Program under this Contract.
37

12. INSPECTIONS AND APPROVALS

- 12.1. The PCS is to be manufactured and tested under the inspection of, and subject to the approval of, WSF and the Authoritative Agencies.
- 12.2. Inspections, tests, measurements, estimates, certifications or other acts or functions performed by the WSF Representative are recognized as being for the sole purpose of assisting WSF to determine with reasonable assurance that the workmanship, materials, rate of progress and quantities provided comply with the Contract Documents. These acts or functions shall not be construed as relieving the Contractor from its responsibilities for full compliance with the Contract Documents and proper performance of the Contract Work.
- 12.3. Without limiting the foregoing, the Contractor acknowledges that the failure of the WSF Representative to discover materials or workmanship not in accordance with the Contract Documents shall not be deemed as acceptance of the Contract Work or materials or as a waiver of the provisions of the Contract Documents. No payment shall be construed as acceptance of any Contract Work or material which is not in compliance with the requirements of the Contract Documents. Approval of any item will not in any case relieve the Contractor of responsibility for satisfactory installation and operation of any such item.
- 12.4. The Contractor is solely responsible for properly preparing and presenting all completed Contract Work for acceptance and for giving adequate notice that the Contract Work in question is complete and ready for inspection.
- 12.5. When submitting an item for approval, the Contractor shall specifically call attention to all departures from the Contract Documents, any previously approved Working Drawings and any additional instructions received from the WSF Representative.
- 12.6. Workmanship and materials not meeting the requirements of the Contract Documents shall be made to satisfy such requirements. Unsuitable work or material shall be reworked and/or replaced at the Contractor's sole expense notwithstanding that the work or materials may have been previously inspected or that payment may have been made incident to a progress billing.

1 **13. OWNER FURNISHED EQUIPMENT**

- 2
3 13.1. There is no OFE to be furnished by WSF under this Contract, except as may be
4 provided in the project Specifications.
5

6
7 **14. SHARED SAVINGS**

- 8
9 14.1. There is no Shared Savings program under this Contract.
10

11
12 **15. DELIVERY OF EQUIPMENT**

13
14 15.1. **General**

15 TIME IS OF THE ESSENCE IN THIS CONTRACT. The Contractor shall provide
16 the attention and labor force necessary to facilitate progress of the Contract Work so
17 that the PCS will be completed and delivered to WSF at the time and place specified
18 herein. At delivery, the PCS shall be ready for installation, and have satisfactorily
19 completed all factory tests, with all equipment in first class running order.
20

21 15.2. **Time**

22 The Contractor shall complete delivery of the PCS according to the schedule
23 specified in the Contractor's Financial and Schedule Proposal. Such schedule must be
24 no later than the Delivery Schedule specified in Contract Exhibit 3, Propulsion
25 Control System Delivery and Milestone Schedule, attached hereto and incorporated
26 herein.
27

28 Failure to comply may subject the Contractor to liquidated damages pursuant to the
29 "Failure To Complete On Time" Article herein. WSF reserves the right to refuse
30 shipment when delivered after normal working hours. WSF's acceptance of late or
31 unsatisfactory performance, with or without objection or reservation, shall not waive
32 the right to claim damage for such breach, nor constitute a waiver of the requirements
33 for the timely performance of any obligation remaining to be performed by the
34 Contractor.
35

36 15.3. **Terms / Location**

37 Unless otherwise specified, the PCS is to be shipped FOB Destination freight prepaid
38 and included. The Destination shall be a WSF specified location in Puget Sound,
39 Washington (to be determined) who will store and care for the PCS until ready for
40 installation.
41

42 As used herein, the term FOB (Free On Board) Destination means: (i) WSF accepts
43 legal title of the PCS at the point of delivery; (ii) the Contractor determines the mode
44 of freight and accepts responsibility for payment of freight charges; and (iii) the
45 Contractor accepts responsibility for processing of freight claims.

1
2 **15.4. Title and Risk of Loss**

3 Regardless of FOB point, the Contractor shall bear all risk of loss, destruction or
4 damage to the PCS if such occurs before delivery. In such event, the Contractor shall
5 not be relieved from any obligation hereunder.
6

7 **15.5. Identification**

8 All invoices, packing lists, packages, instructions, manuals, correspondence, shipping
9 notices, shipping containers and other written documents affecting this Contract shall
10 be appropriately identified to this Contract. Packing lists shall be enclosed with each
11 shipment, indicating the contents therein.
12

13 **15.6. Handling Charges**

14 No charge will be allowed for handling which includes, but is not limited to, packing,
15 wrapping, bags, containers or reels, unless otherwise stated herein.
16

17 **15.7 Freight Charges**

18 There are NO FREIGHT CHARGES on this Contract. Freight is already
19 incorporated into the Total Contract Price for the PCS.
20

21 **15.8 Duties, Tariffs, Fees, Etc.**

22 The Contractor shall be solely responsible for all foreign and U.S. duties, tariffs, fees,
23 taxes and any other charges imposed on the Contract Work, completed products
24 and/or WSF directly as a result of manufacturing outside of the U.S. WSF reserves
25 the right to: (i) withhold final progress payment on the Contract pending proof of
26 such payments; and (ii) offset such charges against the final progress payment, as
27 necessary.
28

29 **15.9 Unauthorized Delivery**

30 In no case shall the Contractor initiate PCS delivery prior to receipt of written
31 authorization from WSF. Expenses incurred otherwise shall be borne by the
32 Contractor.
33

34 **15.10 Storage and Care of PCS Prior to Delivery**

35
36 Except as provided below, the Contractor shall be solely responsible for the storage
37 and care of the PCS prior to the Delivery Date specified in the RFP Contract, Exhibit
38 3, Propulsion Control System Delivery and Milestone Schedules.
39

40 In the event that any Delivery Dates for this Propulsion Control System Replacement
41 Contract are delayed due to a delay in the shipyard installation contract, the
42 Contractor will be required to store and care for the PCS until a revised Delivery Date
43 is established.

1
2 15.11 (Reserved).
3
4

5 **16. INSPECTION AND REJECTION**
6

7 16.1. To ensure that the PCS is in proper condition, WSF will require a joint inspection of
8 the PCS at delivery to WSF. This inspection will not be made until the Contractor
9 has carefully checked, and has reported that all work has been satisfactorily
10 completed. The Contractor shall correct any discrepancies arising from this joint
11 inspection.
12

13 16.2. WSF's inspection of all materials upon delivery is for the sole purpose of
14 identification. Such inspection shall not be construed as Final Acceptance or as
15 acceptance of the materials or equipment if such do not conform to contractual
16 requirements. Without limiting any other rights, WSF, at its sole option, may require
17 the Contractor to: (i) repair or replace, at the Contractor's expense, a defective PCS;
18 (ii) refund the price of a defective PCS; or (iii) accept the return of a defective PCS.
19
20

21 **17. TESTS AND TRIALS**
22

23 17.1. Upon completion of the PCS, the Contractor shall perform factory testing as
24 described in the RFP Technical Specifications.
25

26 17.2 When the Contract Work is essentially complete and all associated installation tests
27 have been satisfactorily completed, and the Ready for Trials Date is set, the
28 Contractor shall participate in Shipboard Operational Tests in accordance with the
29 Contracts Documents.
30

31 17.3 When the Vessel is ready in all respects for sea, except for minor items that have no
32 effect on the ability of the Vessel to be safely and legally taken to sea, and WSF
33 approval is obtained, the Contractor shall participate in Shipboard Operational Tests
34 in accordance with the Contract Documents.
35

36 17.4. The Contractor shall provide WSF with copies of all Contractor generated test
37 memoranda, in blank form, one (1) week before tests are conducted, and copies of all
38 such forms completely filled-out and signed upon completion of the tests.
39

1
2 **18. FAILURE TO MEET CRITICAL MILESTONE COMPLETION DATES**
3

4 18.1. TIME IS OF THE ESSENCE IN THIS CONTRACT. Because the parties find it
5 impractical to calculate the actual cost of performance delays, it is mutually agreed
6 between WSF and the Contractor that liquidated damages, in lieu of actual damages,
7 in the amount of **Six Thousand Dollars (\$6,000) total per calendar day** will be
8 assessed against the Contractor for each and every calendar day that any major
9 milestone marked "CRITICAL" in Exhibit 3, Propulsion Control System Delivery
10 and Milestone Schedule, extends past the due date for the respective milestone in
11 Exhibit 3. Such liquidated damages shall not exceed the sum of **Three Hundred**
12 **Sixty Thousand Dollars (\$360,000) total for the PCS.**
13

14 18.2. The Contractor acknowledges that the liquidated damages agreed to herein are solely
15 and exclusively for damages suffered by WSF in connection with delay and
16 disruption at the shipyard where the PCS will be installed on the Vessel. Any and all
17 other damages incurred by WSF including, but not limited to, those arising from an
18 Event of Default, from Warranty Deficiencies and extra costs incurred by WSF as a
19 result of poor workmanship by the Contractor are in addition to the liquidated
20 damages referred to above.
21

22 18.3. (Reserved).
23
24

25 **19. WARRANTY DEFICIENCIES AND REMEDIES**
26

27 19.1. "Warranty Deficiencies" shall mean any deficiency, imperfection, fault, inferiority or
28 defect in the workmanship, materials and design of the Contract Work, or the failure
29 of Contractor's workmanship, materials or design to meet the terms of the Contract
30 Documents. Without limiting the foregoing, the term "Warranty Deficiencies" shall
31 include any unsatisfactory leakages, pressures, vibrations, noise, temperature levels
32 or component failures. "Correction Period" shall mean a period of twelve (12)
33 months from the Substantial Completion Date. The Correction Period shall be
34 subject to potential adjustment pursuant to Article 19.11. In the event of any such
35 adjustment(s), the maximum Correction Period shall be twenty-four (24) months from
36 the substantial Completion Date, pursuant to Article 19.11.
37

38 19.2. Notwithstanding any action or inaction by WSF or any of the Authoritative Agencies
39 in connection with Contract Work, if at any time within the Correction Period there
40 shall appear, arise, exist or occur any Warranty Deficiency, whether or not discovered
41 during the Correction Period, said Warranty Deficiency shall be made good, at the
42 Contractor's expense, to the requirements of the Contract Documents; Provided,
43 however, the Contractor shall not be responsible for the cost of correcting any
44 deficiency to the extent that such deficiency is due to ordinary wear and tear. At the
45 discretion of WSF, any work required to be performed by the Contractor pursuant to
46 the provisions of this Article shall be carried out:
47

- 1 A. At the Vessel's home port unless impractical; or
- 2
- 3 B. With the concurrence of WSF, while the Vessel is underway; or
- 4
- 5 C. If neither of the foregoing options is available, at a Shipyard provided by,
- 6 and with all expenses paid by, the Contractor.
- 7
- 8 19.3. WSF shall notify the Contractor in writing of any Warranty Deficiency for which the
- 9 Contractor is liable pursuant to Article 19.2 above within twenty-one (21) days after
- 10 its discovery. Whenever WSF discovers a Warranty Deficiency and decides to
- 11 correct it or have it corrected, WSF shall promptly give the Contractor written notice
- 12 thereof and whenever practicable (taking into consideration the necessity of keeping
- 13 the Vessel performing its usual service) the Contractor shall be given an opportunity
- 14 to inspect and correct the Warranty Deficiency or damage. WSF shall have the
- 15 burden of proving the existence of a Warranty Deficiency and shall have the burden
- 16 of proving that any such Warranty Deficiency occurred within the Correction Period.
- 17 Whenever practical (taking into consideration the necessity of keeping the Vessel
- 18 performing its usual service), the Contractor shall be given complete access to the
- 19 Vessel and to all records of WSF relating thereto for the purpose of verifying the
- 20 existence of the Warranty Deficiency and of determining the Contractor's obligation
- 21 to correct it.
- 22
- 23 19.4. Notwithstanding the foregoing, WSF may independently arrange to have Warranty
- 24 Deficiencies corrected underway or by a shipyard in Puget Sound, Washington
- 25 satisfactory to WSF in cases where WSF has provided the Contractor with prior
- 26 written notice of its intent to so correct the Warranty Deficiency and the Contractor
- 27 has failed to repair the problem within twenty-one (21) days of the date of that notice,
- 28 or such shorter time as is deemed appropriate by WSF when the Warranty Deficiency
- 29 is the cause of any emergency or non-emergent inconvenience or difficulty to WSF or
- 30 to the traveling public. In such event the Contractor shall be liable to WSF for the
- 31 expense incurred at the chosen yard, including the cost of drydocking the Vessel
- 32 within the limitations of this Article, if necessary. Alternatively, in the event that the
- 33 repairs are performed by WSF itself, the Contractor shall be liable for all reasonable
- 34 costs incurred by WSF in performing the repairs.
- 35
- 36 19.5. For the determination of any underwater Warranty Deficiencies (if applicable), WSF,
- 37 at its expense, may drydock the Vessel or carry out an underwater survey, during the
- 38 Correction Period. WSF shall pay, at its expense, for the haul day, re-float day and
- 39 any lay days required to accomplish the Vessel's normal drydocking maintenance;
- 40 Provided, however, that if a Warranty Deficiency is discovered, the correction of
- 41 which requires additional drydocking time, the Contractor, in addition to the cost of
- 42 the correction of the Warranty Deficiency, as provided in this Article, shall also pay
- 43 for each additional drydocking lay day. If it becomes necessary to drydock the
- 44 Vessel solely for the correction of a Warranty Deficiency, the cost of the entire
- 45 drydocking required for the correction of the Warranty Deficiency, as well as the cost
- 46 of remedying the Warranty Deficiency, as provided in this Article, shall be at the
- 47 expense of the Contractor; Provided, however, such costs other than the warranty

correction costs specified in Article 19.2 shall be subject to the limitation specified in the "Responsibility For Damage" Article.

19.6. The Contractor shall save and hold WSF harmless with respect to any taxes, ad valorem duty or similar duty imposed or assessed on any payment made in connection with the correction of a Warranty Deficiency.

19.7. The Contractor shall assign to WSF any guarantee or warranty furnished in connection with its purchase of any equipment, materials or items used in the work done pursuant to this Article. The Contractor shall extend such guarantees and warranties so that they remain in effect, at a minimum, through the end of the Correction Period.

19.8. At the end of the Correction Period, the Contractor agrees to transfer and assign to WSF, as to any item of material, equipment and machinery installed in the Vessel, the guarantee or warranty rights of the Contractor against the vendor or supplier of such items where, under the terms of such vendor's or supplier's guarantee, the vendor's obligations extend for a period beyond the Correction Period.

19.9. The Contractor's warranty with regard to all Owner Furnished Equipment, if any, shall be limited to workmanlike installation in accordance with the manufacturer's specifications, approved marine construction practices and the Contract Documents. This provision is not intended to represent a limitation on damages caused by unworkmanlike installation by the Contractor.

19.10. (Reserved).

19.11. If in the good faith opinion of WSF the repair of Warranty Deficiencies requires that the Vessel be removed from service, the Correction Period for the Vessel shall be adjusted to cover a period extending for a period of time equal to the number of calendar days (or partial days) which the Vessel was out of service due to the repair of the Warranty Deficiency. In all cases, upon the correction of a Warranty Deficiency, the Correction Period with respect to the piece of equipment or other item on which the repair was made shall be adjusted to cover a period extending to twelve (12) months from the date of repair of such item was completed. In all events, the maximum Correction Period will be twenty-four (24) months.

19.12. The Contractor shall further warrant all equipment components against latent manufacturing defect failures occurring during the Correction Period and for an additional period of two (2) years immediately following the Correction Period. Any undetected defect that is determined to have existed prior to Substantial Completion is a latent manufacturing defect. Any equipment failure attributable to a latent defect shall be repaired or replaced by the Contractor at no expense to WSF.

19.13. (Reserved).

19.14. (Reserved).

1
2 19.15. The rights and remedies provided in this Article are in addition to, and not in
3 substitution for any rights and remedies which WSF might have as a matter of law or
4 equity or otherwise under the Contract Documents. The failure of WSF to exercise
5 the rights and remedies conferred upon it hereunder shall not constitute a waiver of
6 any of its rights or remedies at any subsequent time. WSF specifically reserves all
7 other written, oral, implied, statutory and common law warranties to WSF arising
8 from performance of the Contract Work.
9

10 11 **20. RIGHTS IN DATA** 12

13 20.1. Subject to Article 20.3 below, data which originates from this Contract shall be
14 "works for hire" as defined by the U.S. Copyright Act of 1976, as amended, and shall
15 be owned by WSF. Data shall include, but not be limited to: non-proprietary plans,
16 specifications, drawings, calculations, reports, non-commercial software programs
17 and detailed software documentation, magnetic and optical media disks, pamphlets,
18 books, surveys, documents, etc. Ownership includes the right to copyright, patent,
19 register and the ability to transfer these rights.
20

21 20.2. Subject to Article 20.3 below, data which is delivered under the Contract, but which
22 does not originate therefrom, shall be transferred to WSF with a non-exclusive,
23 royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform,
24 dispose of, and to authorize others to do so; Provided that such license shall be
25 limited to the extent which the Contractor has a right to grant such a license. Such
26 data does not include proprietary data of the Contractor or its subcontractors and
27 suppliers (see Article 20.3 below), whether developed at any time prior to, or in
28 support of, the performance of the Contract. The Contractor shall exert all reasonable
29 efforts to advise WSF of: (i) all known or potential invasions of privacy or
30 proprietary information contained in such data; and (ii) any portion of such data
31 which was not produced in the performance of this Contract. WSF shall receive
32 prompt written notice of each notice or claim of infringement received by the
33 Contractor with respect to any data delivered under this Contract.
34

35 20.3. Any document(s) or information which the Contractor believes is exempt from public
36 disclosure (RCW 42.17.310) shall be clearly identified by the Contractor and marked
37 with the words "Proprietary Data" along with a statement of the statutory basis for
38 such claim of exemption. (See the Sample Proprietary Data Statement provided in
39 Exhibit A to the RFP Proposal Instructions document.) WSF's sole responsibility
40 shall be limited to maintaining the above data in a secure area and to notify the
41 Contractor of any request(s) for disclosure within a period of five (5) years from
42 WSF's receipt of such data. Failure to so label such materials, or failure to provide a
43 timely response after notice of request for public disclosure has been given, shall be
44 deemed a waiver by the Contractor of any claim that such materials are, in fact, so
45 exempt.
46
47

1 **21. PATENTED DEVICES, MATERIALS AND PROCESSES**

- 2
- 3 21.1. The Contractor shall assume all costs arising from the use of patented devices,
- 4 materials or processes used on or incorporated in the work, and agrees to indemnify,
- 5 defend and save harmless WSF, the Commission, Secretary, and their duly authorized
- 6 agents and employees from any nature for, or on account of, the use of any patented
- 7 devices, materials, or processes; Provided, such indemnity shall not apply in the case
- 8 of any OFE or any brand name item specified by WSF to be used in performance of
- 9 the Contract Work.

10

11

12 **22. (Reserved)**

13

14

15 **23. CONTRACT SECURITY**

- 16
- 17 23.1. The Contractor shall provide WSF Contract Security to protect against performance
- 18 and payment loss exposure, as set forth in this Article. All Contract Security shall
- 19 cover all of the Contract Work, including any Option work (if applicable), and all
- 20 Change Orders.

21

22 No alternate forms of Contract Security are authorized for this Contract.

23

24 23.2. **Performance Security**

- 25
- 26 23.2.1. The Contractor shall provide WSF with Contract Security for performance
- 27 exposure in an amount equal to **fifty percent (50%) of the Total Proposal**
- 28 **Price for Award.** Contemporaneously with the execution of this Contract,
- 29 the Contractor shall provide evidence satisfactory to WSF of such
- 30 protection.

- 31
- 32 23.2.2. Performance Security shall be in the form of:

- 33
- 34 A. A contract bond to protect WSF against performance and payment
- 35 loss exposure, in an amount equal to **one hundred percent**
- 36 **(100%) of the Total Proposal Price for Award;** or
- 37
- 38 B. A performance bond to protect WSF against performance loss
- 39 exposure only, in an amount equal to **fifty percent (50%) of the**
- 40 **Total Proposal Price for Award.**
- 41

23.2.3. The Contract Security for performance exposure shall ensure that WSF receives warranty coverage for all losses resulting from any defects in material and workmanship during the warranty period after Substantial Completion. With the written approval of WSF, the Contractor may vary the form of Performance Security to cover the warranty period after Substantial Completion; Provided that the form of any Contract Security shall comply with the relevant provisions of this Article; and Further Provided that warranty coverage shall be at least as effective in protecting WSF as that contained in WSF's standard contract bond. Warranty coverage for the PCS under a contract or performance bond shall be equal to at least ten percent (10%) of the combined performance and payment security amount at the time of Substantial Completion.

23.3. Payment Security

23.3.1. WSF requires protection against (i) the Contractor's failure to pay all laborers, mechanics, Subcontractors, agents, suppliers, materialmen and others who have provided services and materials for work under the Contract; (ii) all taxes and other governmental obligations related to this Contract; and (iii) all wage rates required by law. This protection shall be in an amount equal to **fifty percent (50%) of the Total Proposal Price for Award**. Contemporaneously herewith, the Contractor shall provide evidence satisfactory to WSF of such protection.

23.3.2. Payment Security shall be in the form of:

- A. A contract bond to protect WSF against performance and payment loss exposure, in an amount equal to **one hundred percent (100%) of the Total Proposal Price for Award**; or
- B. A payment bond to protect WSF against payment loss exposure only, in an amount equal to **fifty percent (50%) of the Total Proposal Price for Award**.

23.4. A contract bond, performance bond or payment bond shall be upon the forms furnished by WSF in the RFP Package, and shall be signed by a Surety approved by the Washington State Insurance Commissioner pursuant to Title 48 RCW.

1 23.5. WSF reserves the right to require additional Contract Security at any time the
2 Contract Work increases WSF's exposure to performance or payment loss. In such
3 event, the Contractor shall provide additional Contract Security so that the total
4 Contract Security is not less than WSF's total exposure to performance and payment
5 loss exposure, as re-calculated by WSF at such time. Such additional Contract
6 Security may be declared by WSF to be temporary in nature and may only be
7 required during the performance of certain Contract Work. At any time that the Total
8 Contract Price reaches one hundred twenty-five percent (125%) of the Total Proposal
9 Price for Award, the Contractor shall obtain the consent of all Sureties issuing
10 contract, performance or payment bonds on this Contract that such security will
11 remain bound under the terms of the Contract. Once this consent is given, additional
12 consent of Sureties will not be required until the revised Total Contract Price, as
13 increased by all subsequent Change Orders, reaches one-hundred twenty-five percent
14 (125%) of revised Total Contract Price previously consented to by the Sureties. If
15 any alternate forms of Contract Security are authorized herein and provided to WSF,
16 the owner(s) of such alternate security will be deemed to have agreed that all alternate
17 securities shall remain bound under the Contract, without additional consent,
18 regardless of any and all extensions of Contract Time and/or increases to the Total
19 Contract Price by Change Orders.
20

21 **23.6. Duration of Contract Security**
22

23 23.6.1. All Contract Security for performance exposure shall not be exonerated by
24 Final Acceptance of all Contract Work, so long as WSF retains any
25 unsatisfied performance or other warranty claims against the Contractor.
26

27 23.6.2. All Contract Security for payment exposure shall remain in effect until the
28 latest of the following dates: (i) WSF receipt of releases from other State of
29 Washington agencies; (ii) the last day for filing of any lien, pursuant to
30 RCW Chapter 60.28 or any other applicable lien law; and (iii) settlement of
31 any liens filed under RCW Chapter 60.28 or any other applicable lien law.
32

33 23.7. Except for warranty coverage, the Contractor shall not use the same assets to secure
34 more than one form of Contract Security.
35
36

24. INSURANCE

24.1. The Contractor shall provide evidence of insurance required under "Types of Insurance" in this Article. Such insurance shall cover injury to persons and/or property suffered by WSF or a third party, as a result of performance of the Contract Work by the Contractor or by any Subcontractor. This coverage shall also provide protection against injuries to all employees of the Contractor and the employees of any Subcontractor engaged in the Contract Work. The required insurance shall be provided by companies or through sources approved by the Washington State Insurance Commissioner pursuant to Chapter 48.05 RCW.

24.2. Evidence of insurance shall be furnished to WSF contemporaneously with execution of the Contract by WSF. Such evidence, executed by the carrier's representative and issued to WSF, shall consist of a certificate of insurance or policy declaration page with required endorsements attached thereto. Acceptance by WSF of deficient evidence does not constitute a waiver of Contract requirements.

24.3. Types of Insurance

24.3.1 Business Personal Property Insurance and Cargo / Transit Insurance providing special form coverage for the PCS, including stock, machinery and equipment, from the commencement of manufacturing until Delivery of the PCS to WSF pursuant to the "Delivery of Equipment" Article.

The Business Personal Property Insurance and Cargo / Transit Insurance shall name WSF as an additional insured. The Policy shall also include a waiver of subrogation for WSF and Subcontractors at any tier. WSF shall also be the loss payee on all claims for which the coverage applies.

The Business Personal Property Insurance and Cargo / Transit Insurance shall have a **limit of liability of at least \$_____** (insert Total Proposal Price for Award for the PCS, including OFE, if any) for the PCS. The Policy **deductible shall not exceed \$50,000** per occurrence. Uninsured and underinsured losses shall be the Contractor's sole responsibility pursuant to the "Responsibilities and Indemnities" Article.

In addition to liability for physical loss of, damage to, or damage caused by the PCS imposed upon the Contractor by law or contract, as provided herein, the Business Personal Property Insurance and Cargo / Transit Insurance shall be written on a primary basis.

1 24.3.2. Commercial General Liability Insurance written under ISO form CG0001,
2 or its equivalent, with **minimum limits of \$2,000,000 each occurrence and**
3 **\$4,000,000 in the aggregate for each policy year or its equivalent.**
4 Products and completed operations coverage shall be provided for a period
5 of one year following Final Acceptance of the Contract Work. Coverage
6 shall be on an "occurrence policy form", not a "claims made" policy form
7 and shall include a waiver of subrogation against WSF.

8
9 The Commercial General Liability insurance shall cover all operations by,
10 or on behalf of, the Contractor including all operations by a Subcontractor.
11 Such insurance shall cover: bodily injury and property damage liability,
12 including coverage for premises and operations; products and completed
13 operations; contractual liability; broad form property damage; and personal
14 injury liability. The insurance shall include coverage while performing
15 Contract Work while aboard the Vessel. WSF shall be named as an
16 additional insured in connection with the Contractor's performance of the
17 Contract.

18
19 24.3.3. Commercial Automobile Liability Insurance providing bodily injury and
20 property damage liability coverage for all owned and non-owned vehicles
21 assigned to or used in the performance of the work **for a combined single**
22 **limit of not less than \$1,000,000 each occurrence.** WSF shall be named
23 as an additional insured in connection with the Contractor's performance of
24 the Contract.

25
26 24.3.4. Worker's Compensation Insurance for all of the Contractor's employees
27 engaged in the Contract Work, as required by State law. The Contractor
28 shall be responsible for Workers' Compensation Insurance for any
29 Subcontractor who provides services under the Contract.

30
31 24.3.5. United States Longshore and Harbor Workers' (U.S. L&H) Insurance and
32 contingent coverage for Jones Act (Marine Employers Liability) in
33 compliance with Federal Statutes, to be provided by the Contractor at least
34 two (2) weeks prior to commencement of Contract Work aboard the Vessel.

35
36 24.3.6. (Reserved).

37
38 24.3.7. Prior to contract execution, the Contractor shall file with the Department of
39 Transportation, Contract Payment Section, P.O. Box 47420, Olympia, WA
40 98504-7420, ACORD form Certificates of Insurance evidencing the
41 minimum insurance coverages required under this Article.

42
43 All insurance policies and Certificates of Insurance shall include a
44 requirement providing for a minimum of 45 days' prior written notice to
45 WSF of any cancellation or reduction of coverage.

1 Failure on the part of the Contractor to maintain the insurance as required
2 shall constitute a material breach of Contract upon which WSF may, after
3 giving five (5) working days' notice to the Contractor to correct the breach,
4 immediately terminate the Contract or, at its discretion, procure or renew
5 such insurance and pay any and all premiums in connection therewith, with
6 any sums so expended to be repaid to WSF on demand, or at the sole
7 discretion of WSF, off set against funds due the Contractor from WSF.

8
9 All costs for insurance shall be considered incidental to and included in the
10 unit Contract prices and no additional payment will be made.
11

12 24.4. Upon written request from WSF, following a claim which may result in the
13 Contractor's indemnification obligation, the Contractor shall provide to WSF copies
14 of the policies required under this Article within five (5) working days after the
15 request.
16

17 24.5. WSF will make no payments to the Contractor at any time when the Contractor has
18 not fully complied with the insurance requirements in this Article. This remedy is not
19 exclusive and WSF may take such other action as is available to it under any other
20 provisions of the Contract, or otherwise in law.
21

22 24.6. The insurance coverage and other requirements in this Article shall not limit the
23 Contractor's responsibilities under this Contract including, but not limited to, duties
24 of liability and indemnity.
25

26 **25. NO THIRD PARTY BENEFICIARIES**

27
28
29 25.1. Each party's promises, obligations and duties under this Contract are for the benefit of
30 the other party only and not for the benefit of any person or entity not a signatory to
31 this Contract.
32
33

1
2
3 **26. TITLE**

4 26.1. All material and equipment purchased by the Contractor to perform Contract Work
5 shall become the property of WSF upon installation or upon earlier payment by WSF.
6 WSF shall have title thereto free and clear of any lien and/or encumbrances. The
7 Contractor shall promptly pay all indebtedness for labor, materials, tools, equipment
8 and any other items used by the Contractor in the performance of the Contract Work.
9 Before release of the Retainage, the Contractor shall deliver to WSF a Warranty of
10 Freedom from Liens for such indebtedness, with an affidavit in the form of Exhibit 4
11 attached hereto and by this reference incorporated herein. Such affidavit is to
12 document that all bills for labor, materials, tools, equipment, etc., incurred for the
13 Contract work have been paid. The Contractor shall not permit any lien, unpaid
14 obligation or charge to disrupt the schedule of Contract Work. If any lien, unpaid
15 obligation or charge results in an *in rem* or any other action against WSF, the
16 Contractor shall take all such steps as are necessary to avoid a delay in completion
17 and shall hold WSF harmless from all losses, costs, damages or expenses incidental
18 thereto.
19

20 **27. NO ARRESTS OR ATTACHMENTS**

21
22 27.1. The parties agree that no lien or other *in rem* proceeding may attach to or otherwise
23 affect title to the Vessel or any other vessel or property owned by WSF in connection
24 with any dispute or claim arising under or in connection with this Contract. To the
25 extent any such rights survive this Contract, the Contractor does waive to the fullest
26 extent permitted by law any *in rem* rights, lien rights or other rights it has or may
27 have under this Contract, under the law, or otherwise, against the Vessel or any other
28 vessel owned or operated by WSF, including but not limited to all maritime lien
29 rights and shall not arrest or attach the Vessel, or any other vessel or property owned
30 or operated by WSF, in connection with any dispute or claim arising under or in
31 connection with this Contract.
32

33 27.2. The Contractor shall be responsible for making certain that equivalent restrictions on
34 the enforcement of lien and *in rem* rights are included in all of its contracts with
35 Subcontractors and suppliers of materials or services.
36
37

38 **28. NO WAIVER OF IMMUNITY**

39
40 28.1. The provisions of this Contract do not and are not intended to in any manner waive or
41 limit WSF's and the State's right of sovereign immunity or any statutory prohibition
42 against asserting liens or encumbrances against the property of WSF and the State.
43
44

1 **29. NOTICES**

- 2
- 3 29.1. Unless WSF or the Contractor notifies the other in writing of a change of address or
- 4 of the representative, in which event any notice shall be mailed, telegraphed,
- 5 facsimiled or delivered to the changed address, any notice under this Contract shall be
- 6 in writing or facsimile addressed to the following representatives:

For WSF:

For Contractor:

Telephone:

Telephone:

Fax:

Fax:

7

8

9 **30. CHOICE OF LAW AND VENUE**

- 10
- 11 30.1. The Contract shall be deemed executed in the State of Washington and the laws of the
- 12 State of Washington shall govern the interpretation and application of its provisions.
- 13 All claims or causes of action under this Contract shall be brought only in the
- 14 Superior Court of Thurston County, Washington. The Contractor waives, to the
- 15 fullest extent permitted by law, any right to challenge jurisdiction, venue or to claim
- 16 that said court is an inconvenient forum.
- 17

18

19 **31. NOTICE OF LABOR DISPUTES**

- 20
- 21 31.1. If the Contractor has knowledge that any actual or potential labor dispute is delaying
- 22 or threatens to delay the timely performance of this Contract, the Contractor shall
- 23 immediately give verbal notice, followed by written notice, including all relevant
- 24 information, to the WSF Project Engineer.
- 25
- 26 31.2. The Contractor agrees to insert the substance of this Article, including this paragraph,
- 27 in any subcontract to which a labor dispute may delay the timely performance of this
- 28 Contract; except that each subcontract shall provide that in the event its timely
- 29 performance is delayed or threatened to be delayed by an actual or potential labor
- 30 dispute, the Subcontractor shall immediately notify the next higher tier subcontractor
- 31 or the prime Contractor, as the case may be, of all relevant information concerning
- 32 the dispute.
- 33
- 34 31.3. The Contractor shall keep the WSF Project Engineer advised of the results of all labor
- 35 negotiations that may result in a labor dispute, or which may in turn delay timely
- 36 performance of the Contract.
- 37

1
2
3 **32. MILESTONES**

- 4 32.1. The Contractor shall comply with the dates established by the Contractor in the
5 Master System Manufacturing Schedule (MSMS) required by the Technical
6 Specifications (see Attachment 1 to Contract Exhibit 3). In addition to the milestones
7 required in the Technical Specifications, the MSMS shall include the milestones
8 (which are not necessarily in sequential order) shown in Exhibit 3, "Delivery and
9 Milestone Schedule".
- 10 32.2. After the WSF Project Engineer has approved the initial MSMS, it shall serve as the
11 Contract baseline for the purposes of this Article. The Contractor shall successfully
12 accomplish the major milestones on, or prior to, the times proposed in Exhibit 3 and
13 in the MSMS.
- 14 32.3. If any major milestone event is not accomplished by the date listed, and the failure to
15 accomplish any such milestone event does not arise from a cause beyond the control
16 and without fault or negligence of the Contractor, such failure may (if it is considered
17 to jeopardize a critical milestone date or the Substantial Completion Date) be deemed
18 to constitute a failure to perform this Contract in accordance with its terms within the
19 meaning of the "Termination for Default" Article.
20
21
22

23 **33. WSDOT STANDARD SPECIFICATIONS**

- 24
25 33.1. Attached hereto and incorporated herein is Exhibit 7, Division 1 of the 2006 Standard
26 Specification For Road, Bridge and Municipal Construction (English Units),
27 published by the Washington State Department of Transportation (hereinafter called
28 "Standard Specifications"). This Contract document shall be used in conjunction
29 with the Standard Specifications. To the extent there is any conflict between the two
30 (2) documents, this Contract document shall control. To the extent of any dispute
31 regarding application of terms and conditions in the Standard Specifications, the
32 determination of WSF shall be final and conclusive.
33
34

34. INTEGRATION, MERGER AND SEVERANCE

34.1. All prior understandings and agreements heretofore entered into between WSF and the Contractor, whether written or oral, are superseded by and merged in this Contract which alone fully and completely expresses the agreement between WSF and the Contractor. This Contract may not be changed orally, nor may it be modified or varied in any manner, except in a writing signed by both parties, or as otherwise specified herein. The failure of either party to insist upon strict compliance shall not constitute a waiver or the abrogation of such provision, nor shall it constitute a waiver of compliance or performance in any other instance. No course of dealing between the parties shall operate as a waiver by either party, and no delay on the part of either party in the exercise of any right hereunder shall operate as a waiver of any right of such party. In the event any provision of this Contract, or any amendment thereto, is found to be invalid, illegal or unenforceable, it shall be deemed severed from the Contract, which shall then be construed and enforced as though such illegal, invalid or unenforceable provision had never been a part thereof. All Article headings are for identification purposes only.

1
2 **IN WITNESS WHEREOF**, the parties hereto have entered into this Contract, by
3 their duly authorized representatives, as of the day and year first written above.
4
5
6
7

8 **WASHINGTON STATE FERRIES**
9 **Washington State Department of Transportation**
10
11
12

13 By: _____
14 W. Michael Anderson
15 Executive Director
16
17
18
19

20 **(CONTRACTOR)**
21
22
23

24 By: _____
25
26
27
28
29
30
31
32
33

34 Approved As To Form For WSF:
35
36

37 By: _____
38 Mark S. Lyon
39 Assistant Attorney General
40
41

42 Date: _____
43

WASHINGTON STATE FERRIES

M.V. ELWHA

PROPULSION CONTROL SYSTEM REPLACEMENT

CONTRACT NO. 00-7171

LIST OF CONTRACT EXHIBITS

<u>EXHIBIT</u>	<u>TITLE</u>
1.	FTA ARTICLES FOR PROCUREMENT CONTRACTS
2.	WAGES, BENEFITS AND RATES
	A. ATTACHMENT A Prevailing Minimum Hourly Wage Rates - Federal
	B. ATTACHMENT B Prevailing Minimum Hourly Wage Rates – State
3.	PROPULSION CONTROL SYSTEM DELIVERY AND MILESTONE SCHEDULES
4.	AFFIDAVIT RE: LIENS, ENCUMBRANCES
5.	WSDOT 2006 STANDARD SPECIFICATIONS - DIVISION 1

EXHIBIT 1

**FEDERAL TRANSIT ADMINISTRATION ARTICLES
FOR PROCUREMENT CONTRACTS**

**FEDERAL TRANSIT ADMINISTRATION ARTICLES
FOR PROCUREMENT CONTRACTS**

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EXHIBIT 2

FEDERAL TRANSIT ADMINISTRATION ARTICLES FOR PROCUREMENT CONTRACTS

STANDARD TERMS AND CONDITIONS

The following Articles apply to all FTA-Assisted Third-Party Contracts and Subcontracts.

I.

FLY AMERICA REQUIREMENTS

**49 U.S.C. §40118
41 CFR Part 301-10**

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Fly America

1. The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.
2. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.
3. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

II.

BUY AMERICA REQUIREMENTS

9 U.S.C. 5323(j)
49 CFR Part 661

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

The Buy America requirements flow down from FTA recipients and subrecipients to first tier Contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Buy America

This Contract is subject to the Federal Transit Administration's (FTA's) Buy America requirements in 49 CFR Part 661. and 49 U.S.C. 5323 (j). The Contractor agrees to abide by its Buy America Certificate submitted with its bid/proposal.

1
2 **III.**

3 **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

4
5 **49 CFR Part 29**
6 **Executive Order 12549**
7

8 Executive Order 12549, as implemented by 49 CFR Part 29, prohibits FTA recipients and
9 sub-recipients from contracting for goods and services from organizations that have been
10 suspended or debarred from receiving Federally-assisted contracts. As part of their
11 applications each year, recipients are required to submit a certification to the effect that they
12 will not enter into contracts over \$100,000 with suspended or debarred Contractors and that
13 they will require their Contractors (and their subcontractors) to make the same certification
14 to them.

15 Contractors are required to pass this requirement on to subcontractors seeking subcontracts
16 over \$100,000. Thus, the terms "lower tier covered participant" and "lower tier covered
17 transaction" include both Contractors and subcontractors and contracts and subcontracts over
18 \$100,000.

19
20 **Debarment and Suspension**

21 This Contract is subject to the Federal Transit Administration's (FTA's) debarment and
22 suspension requirements in 49 CFR Part 29 and Executive Order 12549. The Contractor
23 agrees to abide by the following certifications submitted with its bid/proposal: "Certification
24 of Contractor Regarding Debarment, Suspension, and Other Responsibility Matters";
25 "Certification of Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary
26 Exclusion - Lower Tier Covered Transaction"; and corresponding certifications for
27 subcontractors.

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IV.

LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, § 7.

The Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Lobbying Certification and Disclosure of Lobbying Activities for third party Contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d) - Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that Contractors file the certification required by 49 CFR Part 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995. - Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A. **Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

1 **Lobbying**

2
3 This Contract is subject to the Federal Transit Administration's (FTA's) Lobbying
4 requirements in 31 U.S.C. 1352, 49 CFR Part 19 and 49 CFR Part 20. The Contractor agrees
5 to abide by its "Certification Regarding Lobbying" submitted with its bid/proposal.
6

7
8 **V.**

9 **ACCESS TO RECORDS AND REPORTS**

10
11 **49 U.S.C. 5325**
12 **18 CFR 18.36 (i)**
13 **49 CFR 633.17**
14

15 Reference Chart "Requirements for Access to Records and Reports by Type of Contracts".
16 FTA does not require the inclusion of these requirements in subcontracts.
17

18 **Access to Records and Reports**

19 The following access to records requirements apply to this Contract:

- 20 1. Where the Purchaser is not a State but a local government and is the FTA Recipient
21 or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the
22 Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller
23 General of the United States or any of their authorized representatives access to any
24 books, documents, papers and records of the Contractor which are directly pertinent
25 to this contract for the purposes of making audits, examinations, excerpts and
26 transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the
27 FTA Administrator or his authorized representatives including any PMO Contractor
28 access to Contractor's records and construction sites pertaining to a major capital
29 project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance
30 through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- 31 2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA
32 Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the
33 Purchaser, the FTA Administrator or his authorized representatives, including any
34 PMO Contractor, access to the Contractor's records and construction sites pertaining
35 to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal
36 financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
37 By definition, a major capital project excludes contracts of less than the simplified
38 acquisition threshold currently set at \$100,000.
- 39 3. Where the Purchaser enters into a negotiated contract for other than a small purchase
40 or under the simplified acquisition threshold and is an institution of higher education,
41 a hospital or other non-profit organization and is the FTA Recipient or a subgrantee

1 of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to
 2 provide the Purchaser, FTA Administrator, the Comptroller General of the United
 3 States or any of their duly authorized representatives with access to any books,
 4 documents, papers and record of the Contractor which are directly pertinent to this
 5 contract for the purposes of making audits, examinations, excerpts and transcriptions.

6 4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA
 7 Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital
 8 project or improvement (defined at 49 U.S.C. 5302(a)1) through other than
 9 competitive bidding, the Contractor shall make available records related to the
 10 contract to the Purchaser, the Secretary of Transportation and the Comptroller
 11 General or any authorized officer or employee of any of them for the purposes of
 12 conducting an audit and inspection.

13 5. The Contractor agrees to permit any of the foregoing parties to reproduce by any
 14 means whatsoever or to copy excerpts and transcriptions as reasonably needed.

15 6. The Contractor agrees to maintain all books, records, accounts and reports required
 16 under this contract for a period of not less than three years after the date of
 17 termination or expiration of this contract, except in the event of litigation or
 18 settlement of claims arising from the performance of this contract, in which case
 19 Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the
 20 Comptroller General, or any of their duly authorized representatives, have disposed
 21 of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR
 22 18.39(i)(11).

23 7. FTA does not require the inclusion of these requirements in subcontracts.

24 **Requirements for Access to Records and Reports by Types of Contract**

Contract Characteristics		Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I <u>State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects		None None unless ¹ non-competitive award	Those imposed on state pass thru to Contractor	None unless non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award

25 Sources of Authority: ¹ 49 USC 5325 (a) ² 49 CFR 633.17 ³ 18 CFR 18.36 (i)

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VI.
ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.
49 CFR Part 18

<p>The Energy Conservation requirements are applicable to all contracts.</p> <p>The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.</p>

Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

VII.
CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

<p>The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.</p> <p>The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.</p>
--

Clean Water

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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VIII.
CLEAN AIR

42 U.S.C. 7401 et seq.
40 CFR 15.61
49 CFR Part 18

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Clean Air

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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IX.
FEDERAL CHANGES

49 CFR Part 18

<p>The Federal Changes requirement applies to all contracts.</p> <p>The Federal Changes requirement flows down appropriately to each applicable changed requirement.</p>
--

Federal Changes

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October, 1999) between the State and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

X.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicable to all contracts.

Not required by statute or regulation for either primary Contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

No Obligation by the Federal Government

1. The State and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the State, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XI.
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

These requirements are applicable to all contracts.

These requirements flow down to Contractors and subcontractors who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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XII.

CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

<p>The Civil Rights Requirements apply to all contracts. The Civil Rights requirements flow down to all third party Contractors and subcontractors at every tier.</p>

Civil Rights

The following requirements apply to the underlying contract:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - A. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer,

recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

B. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

XIII.

DISADVANTAGED BUSINESS ENTERPRISES

CFR Part 26

The Contractor shall comply with the Disadvantaged Business Enterprise (DBE) provisions in the bid/proposal package issued by the State.

XIV.

BREACHES AND DISPUTE RESOLUTION

The Contractor shall comply with the "Termination of Contract", Disputes and Claims", "Claims Resolution" and other applicable Sections of the WSDOT Standard Specifications.

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2 **XV.**
3 **TERMINATION**

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5 The Contractor shall comply with the "Termination of Contract" Section of the WSDOT
6 Standard Specifications.
7

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9 **XVI.**
10 **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS**

11 [FTA Circular 4220.1D](#) (also see [Change 1](#))

12
13 The incorporation of FTA terms applies to all contracts.

14
15 The incorporation of FTA terms has unlimited flow down.
16

17 **Incorporation of Federal Transit Administration (FTA) Terms**

18 The preceding provisions include, in part, certain Standard Terms and Conditions required by
19 DOT, whether or not expressly set forth in the preceding contract provisions. All contractual
20 provisions required by DOT, as set forth in [FTA Circular 4220.1D](#) (also see [Change 1](#)), dated
21 April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein
22 notwithstanding, all FTA mandated terms shall be deemed to control in the event of a
23 conflict with other provisions contained in this Agreement. The Contractor shall not perform
24 any act, fail to perform any act, or refuse to comply with any State requests which would
25 cause the State to be in violation of the FTA terms and conditions.
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31 **PROCUREMENT CONTRACTS**

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33 **Other than the Standard Terms and Conditions, there are no additional FTA Articles**
34 **required for Procurement Contracts.**
35
36

37 **(END)**

EXHIBIT 2

WAGES, BENEFITS AND RATES

EXHIBIT 2

WAGES, BENEFITS AND RATES

WAGES

1. GENERAL

- 1.1 This Contract is subject to the minimum wage requirements of RCW 39.12 and to RCW 49.28 (as amended or supplemented) for any Contract work performed within the State of Washington. Federal wage laws and rules also apply. This document lists hourly minimum rates for wages, fringe benefits, and overtime pay requirements.
- 1.2 The Contractor, any subcontractor, or other person doing any work under the Contract shall not pay any worker less than the minimum hourly wage rates and fringe benefits shown in this document. Higher wages and benefits may be paid.
- 1.3 By including wage, fringe benefit, and overtime rates in this Contract, WSF does not imply that the Contractor will find labor available at those rates. The Contractor shall calculate and be responsible for any amounts above the minimums that will actually have to be paid. The wage rates which must be paid for the duration of the Contract are those which are in effect at the bid Due Date.
- 1.4 When the project is subject to both State and Federal wage rates and when the two rates differ for similar kinds of labor, the Contractor shall not pay less than the higher rate.
- 1.5 If employing labor in a class not listed in the special provisions, the Contractor shall request a determination of the correct wage rate for the class and locality from the Industrial Statistician, State Department of Labor and Industries, and/or from the US Secretary of Labor on Federal-aid projects. The Contractor shall provide a copy of these determinations to WSF.

1
2 1.6 WSF contacted the Federal Highway Administration (FHWA) regarding the
3 application of the Davis-Bacon Act to this project. FHWA confirmed that the
4 Davis-Bacon Act does apply to the "building, alteration and repair of ships".
5 However, WSF is not aware of a Federal Wage Determination for the building,
6 alteration and repair of ships under Federal contracts. Further, the location of
7 performance for this Contract was not known at the time WSF issued the
8 project advertisement. Therefore, the wage rates established by Washington
9 State Department of Labor and Industries for "Shipbuilding and Ship Repair"
10 will apply to this Contract (see page 5, Wage Rates, herein) for any Contract
11 Work performed within the designated counties in the State of Washington.
12 Pursuant to Federal guidelines, the Contractor is reminded that it must: (i) pay
13 at the very least the Federal minimum wage rate; (ii) submit weekly certified
14 payroll statements; and (iii) comply with all other U.S. Department of Labor
15 standards.
16

17 2. POSTING NOTICES 18

19 2.1 In a location acceptable to the Department of Labor and Industries, the
20 Contractor shall post:
21

- 22 A. One copy of the approved "Statement of Intent to Pay Prevailing
23 Wages";
24
25 B. One copy of the prevailing wage rates for the project;
26
27 C. The address and telephone number of the Industrial Statistician for the
28 Department of Labor of Industries (along with notice that complaints or
29 questions about wage rates may be directed there); and
30
31 D. The following posters if the project is funded with Federal aid:
32
33 1. FHWA 1495 and 1495A Wage Rate Information;
34 2. FHWA 1022 Fraud Notice; and
35 3. OFCCP – 1420 Equal Employment Opportunity is the Law.
36

1
2 **3. APPRENTICES**
3

4 3.1 If employing apprentices, the Contractor shall submit to WSF written evidence
5 showing:
6

7 A. Each apprentice is enrolled in a program approved by the Washington
8 State Apprenticeship and Training Council;
9

10 B. The progression schedule for each apprentice; and
11

12 C. The established apprentice-journeyman ratios and wage rates in the
13 project locality upon which the Contractor will base such ratios and
14 rates under the Contract. Any worker for whom an apprenticeship
15 agreement has not been registered and approved by the Washington
16 State Apprenticeship and Training Council shall be paid at the
17 prevailing hourly rate for journeymen as provided in RCW 39.12.021.
18

19 **4. DISPUTES**
20

21 4.1 If labor and management cannot agree in a dispute over the proper prevailing
22 wage rates, the Contractor shall refer the matter to the Director of the
23 Department of Labor and Industries (or to the U.S. Secretary of Labor when
24 that agency sets the rates). The Director's (or Secretary's) decision will be
25 final, conclusive, and binding on all parties.
26

27 **5. REQUIRED DOCUMENTS**
28

29 5.1 On forms the Industrial Statistician, State Department of Labor and Industries
30 (State L&I) provides, the Contractor shall submit the following for itself and
31 for each subcontractor that performs Contract Work:
32

33 A. A "Statement of Intent to Pay Prevailing Wages" (State L&I form
34 number F700-029-000). WSF will make no payment under the
35 Contract for the work performed until this Statement has been
36 completed, approved, and submitted.

1
2 B. An "Affidavit of Wages Paid," (State L&I form number F700-007-
3 000), with the Final Contract Voucher Certification. WSF will not
4 release to the Contractor any funds retained under RCW 60.28.010
5 until all the "Affidavits for Wages Paid" forms have been completed,
6 approved, and submitted.
7

8 5.2 The Contractor shall be responsible for requesting these forms from State L&I
9 and for paying any approval fees required by State L&I.
10

11 5.3 In addition, the Contractor shall submit a "Request for Release" to State L&I
12 on a form provided by that agency.
13

14 5.4 Certified payrolls are required to be submitted by the Contractor to WSF, for
15 the Contractor and all subcontractors or agents on: (i) all Federal-aid projects;
16 and (ii) when requested in writing by WSF, on projects funded with only State
17 funds. If these payrolls are not supplied within ten (10) calendar days of the
18 end of the preceding weekly payroll period for Federal aid projects or within
19 ten (10) calendar days for the date of the written request on projects with only
20 State funds, any or all payments may be withheld until compliance is achieved.
21 Also, failure to provide these payrolls could result in other sanctions as
22 provided by State law (RCW 39.12.050) and/or Federal regulations (29 CFR
23 5.12). All certified payrolls shall be complete and explicit. Employee work
24 classification codes used on certified payrolls shall coincide exactly with the
25 occupational codes listed on the project's minimum wage schedule. When an
26 apprentice is shown on the certified payroll at a rate less than the minimum
27 prevailing journey wage rate, the apprenticeship registration number for that
28 employee from the State Apprenticeship and Training Council shall be shown
29 along with the correct employee classification code.
30

31 **6. AUDITS**

32

33 6.1 WSF and/or State L&I may inspect or audit the Contractor's wage and payroll
34 records at any time during the Contract and up to three (3) years after WSF
35 acceptance of the Contract Work. The Contractor shall maintain such records
36 for that period. The Contractor shall also guarantee that wage and payroll
37 records of all his subcontractors and agents shall be open to similar inspection
38 and auditing for the same period of time. WSF will give the Contractor
39 reasonable notice of the starting date if an audit will begin more than sixty (60)
40 days after WSF's acceptance of the Contract Work.
41

42 **WORKER BENEFITS**

- 1
2
3 1. The Contractor shall make all payments required for unemployment compensation
4 under Title 50 RCW and for industrial insurance and medical aid required under Title
5 51 RCW. If any payment required by Title 50 or Title 51 is not made when due, WSF
6 may retain such payments from any money due the Contractor and pay the same into
7 the appropriate fund.
8
- 9 2. The Public Works Contract Division of State L&I will provide the Contractor with
10 applicable industrial insurance and medical aid classification and premium rates. The
11 "Request for Release" form of State L&I is also for the purpose of obtaining a release
12 with respect to the payments of industrial insurance and medical aid premiums.
13
- 14 3. For work on or adjacent to water, the Contractor shall make its own determinations as
15 to whether workers will be covered under the Longshoreman's and Harbor Worker's
16 Compensation Act administered by the U.S. Department of Labor, or State Industrial
17 Insurance administered by State L&I, or by both. The Contractor shall include all
18 costs of providing either or both of the aforementioned insurance coverage's in its
19 Bid. The Contractor will not be entitled to any additional payments for: (i) failure to
20 include such costs in its Bid; or (ii) determinations made by the U.S. Department of
21 Labor or State L&I regarding the insurance coverage.
22

23 24 **WAGE RATES**

- 25
26
27 1. The prevailing rate of wages to be paid to all workmen, laborers, or mechanics
28 employed in the performance of any part of this Contract shall be in accordance with
29 the provisions of Revised Code of Washington (RCW) 39.12. The rules and
30 regulations of State L&I and the schedule of prevailing wage rates for the locality or
31 localities where this Contract will be performed, as determined by the State L&I
32 Industrial Statistician, are by reference made a part of this Contract as though fully set
33 forth herein. Specific prevailing wage rates for this Contract, by class and locality, are
34 attached hereto as **Attachment "A" (Federal)** and **Attachment "B" (State)**, and by
35 this reference made a part of this Contract .
36
- 37 2. If employing labor in a class not listed in the Contract, the Contractor shall request a
38 determination of the correct wage rate for that class and locality from the State L&I
39 Industrial Statistician. The Contractor shall provide a copy of these determinations to
40 WSF.

- 1
2 3. In case any dispute arises as to the prevailing wage rates for work of a similar nature
3 and such dispute cannot be adjusted by the parties in interest, including labor and
4 management representatives, the matter shall be referred for arbitration to the Director
5 of the State L&I and his decision therein shall be final and binding on all parties
6 involved in the dispute as provided by RCW 39.12.060 as amended.
7
8
9
10
11

(END)

ATTACHMENT “A”

Prevailing Minimum Hourly Wage Rates – Federal

(N/A – see Attachment “B”)

ATTACHMENT “B”

Prevailing Minimum Hourly Wage Rates – State

**NEW 130 – AUTO FERRIES
PROPULSION SYSTEM CONTRACT**

WAGE RATES

The prevailing rate of wages to be paid to all workmen, laborers, or mechanics employed in the performance of any part of this Contract shall be in accordance with the provisions of Revised Code of Washington (RCW) 39.12. The rules and regulations of the Washington State Department of Labor and Industries (L & I) and the schedule of prevailing wage rates for the locality or localities where this Contract will be performed, as determined by the L & I Industrial Statistician, are by reference made a part of this Contract as though fully set forth herein.

If employing labor in a class not listed in the Contract, the Contractor shall request a determination of the correct wage rate for that class and locality from the L & I Industrial Statistician. The Contractor shall provide a copy of these determinations to Washington State Ferries.

Since the Contractor will be held responsible for paying the prevailing wages, not less than the hourly minimum wage, it is imperative that all bidders familiarize themselves with the current wage rates before submitting bids based on these specifications.

In case any dispute arises as to the prevailing wage rates for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State of Washington and his decision therein shall be final and binding on all parties involved in the dispute as provided by RCW 39.12.060 as amended.

Attachment B

(PROPOSERS SHOULD SEE THE RFP VOLUME OR GO TO
<http://www.lni.wa.gov/prevalingwage/jwages/20061/3-3-06trades.pdf/ship03-03-06.pdf>
ON THE INTERNET
TO VIEW WASHINGTON STATE PREVAILING WAGE RATES.)

EXHIBIT 3

**PROPULSION CONTROL SYSTEM
DELIVERY AND MILESTONE SCHEDULES**

EXHIBIT 3

WASHINGTON STATE FERRIES

**M.V. ELWHA
PROPULSION CONTROL SYSTEM REPLACEMENT
CONTRACT NO. 00-7171**

DELIVERY SCHEDULE

The Delivery Dates for the Final Construction Bid Support Package and the Propulsion Control System, Spare Parts and Special Tools* shall be as follows:

DELIVERY DATE

**Final Construction Bid
Support Package**

No later than 77 days after Contract Award

**Propulsion Control
System, Spare Parts
and Special Tools:**

Between December 15 and 29, 2006

* Refers to actual propulsion control system, spare parts and special tools only. Training; Engineering Support; Testing; Drawings, Manuals and Software; the draft Contract Bid Support Package; and Administration Plans and Schedules all have different, and often multiple, delivery times (see the Milestone Schedule on the following pages).

MILESTONE SCHEDULE

- 1 Below are milestones events and corresponding time requirements. Critical Milestones
 2 are in bold. See the Contract's "Failure to Meet Critical Milestones Completion Dates"
 3 and "Milestones" Articles for additional information.

	<u>DELIVERABLE ITEMS</u>	<u>DUE NO LATER THAN:</u>
1.	Complete delivery of draft Contract Bid Support Package for WSF review	TBD
2.	Complete delivery of complete detailed design drawings, engineering calculations and final WSF-approved Contract Bid Support (CBS) package (CRITICAL)	Per Delivery Date on page 1.
3.	All system design submittals approved by WSF Vessel Design	TBD
4.	All system design submittals approved by Authoritative Agencies	TBD
5.	Deliver complete manufacturing and shop drawings to WSF	TBD
6.	All system manufacturing submittals approved by WSF Vessel Design	TBD
7.	All system manufacturing submittals approved by Authoritative Agencies	TBD
8.	Complete manufacturing of PCS	TBD
9.	Complete PCS factory tests; approved by WSF Project Manager.	TBD
10.	Complete delivery of PCS, Spare Parts and Special Tools to WSF at Shipyard (CRITICAL)	Per Delivery Date on page 1.
11.	Complete delivery of detailed PCS technical information to WSF at Shipyard	TBD
12.	Complete PCS training for Vessel	TBD
13.	Complete dock trials	TBD

	<u>DELIVERABLE ITEMS</u>	<u>DUE NO LATER THAN:</u>
14.	Complete sea trials with approval of WSF Project Manager	TBD
15.	Complete five (5) day “no-faults” test period for Vessel	TBD
16.	Deliver final documentation for PCS	TBD
17.	Deliver final manuals and as-built drawings approved by WSF Project Manager	TBD

NOTE: The above schedules are subject to change during the RFP process.

(END)

ATTACHMENT 1

**INITIAL MASTER SYSTEM
MANUFACTURING SCHEDULE**

COPY OF

INITIAL MASTER SYSTEM MANUFACTURING SCHEDULE

TO BE INSERTED AS ATTACHMENT 1

UPON RECEIPT FROM CONTRACTOR

EXHIBIT 4

AFFIDAVIT RE: LIENS, ENCUMBRANCES

EXHIBIT 4

WASHINGTON STATE FERRIES

**M.V. ELWHA
PROPULSION CONTROL SYSTEM REPLACEMENT
CONTRACT NO. 00-7171**

AFFIDAVIT RE: LIENS, ENCUMBRANCES

1 STATE OF _____)
2) ss.
3 COUNTY OF _____)
4
5

6 _____, being duly sworn deposes and states:
7

8 I am the _____
9 of _____ (the "Contractor") and am authorized by the
10 Contractor to issue this Affidavit.
11

12 I refer to that certain Contract titled "M.V. ELWHA PROPULSION CONTROL
13 SYSTEM REPLACEMENT CONTRACT NO. 00-7171", dated _____,
14 2006, [as amended], (the "Contract"). All capitalized terms not defined are used as defined
15 therein.
16

17 I hereby certify that as of today's date the Contractor has paid all indebtedness for
18 labor, materials, tools, equipment and other items used by the Contractor in the performance
19 of the Contract Work and that there are no liens or encumbrances for any such indebtedness
20 on the propulsion systems.
21

22 Dated _____, 2006.
23
24
25

26 Sworn to before me this ____ day of _____, 2006.
27

28 _____
29 Notary Public
30

31 My Appointment Expires: _____

EXHIBIT 7

WSDOT 2006 STANDARD SPECIFICATIONS - DIVISION 1

1
2
3
4
5
6
7
8
9
10
11
12
13 **(PROPOSERS SHOULD SEE THE RFP VOLUME OR GO TO**
14
15 **“[http://www.wsdot.wa.gov/fasc/EngineeringPublications/](http://www.wsdot.wa.gov/fasc/EngineeringPublications/Manuals/2006SS.pdf)**
16 **Manuals/2006SS.pdf”**
17
18 **ON THE INTERNET TO VIEW THE STANDARD**
19
20 **SPECIFICATIONS FOR ROAD, BRIDGE AND MUNICIPAL**
21 **CONSTRUCTION, 2006 EDITION (REVISED).)**
22
23
24
25
26

NOTES

[illegible]